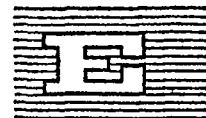


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COMMISSION ON HUMAN RIGHTS
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STUDY OF REPORTED VIOLATIONS OF HUMAN RIGHTS IN CHILE,
WITH PARTICULAR REFERENCE TO TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Note by the Secretariat

By a letter dated 20 February 1978, addressed to the Director-General of the United Nations Office at Geneva, the Permanent Representative of Chile to the United Nations Office at Geneva transmitted for issuance as an official document of the Commission the attached document, which constitutes the observations of the Government of Chile on the report of the Ad Hoc Working Group to inquire into the situation of human rights in Chile (E/CN.4/1266).

* English text communicated by the delegation of Chile.

GE.78-3165

GENEVA, February 1978

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AD-HOC WORKING GROUP

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DELEGACION PERMANENTE DE CHILE
ANTE LAS ORGANIZACIONES INTERNACIONALES
GINEBRA

INTRODUCTION

As the Government of Chile has been stating in its successive replies to the different Reports of the Ad-hoc Working Group the latest Report once again incurs in the same vices, but futhermore, this time going into intolerable extraliimitations.

In this situation, the Chilean Government feels that it cannot, as a sovereign and independent state, accept the fact of being discriminated, that in its respect basic principles of international law are violated and that what has become known as "the Chile case" continues to receive world attention with obvious absence of rules that guarantee objectivity and ecuanimity, and respect for the sovereignty and independence of countries as Member State of the international community.

Furthermore, due to the Unites Nation's attack suffered by Chile, the Goverment called for a National Consultation and its results backed up the Government's position by an overwhelming majority.

The Resolution adopted last December by the United Nations General Assembly exceeded all tolerable limits, both in its terms and its significance, an was explicitly repudiated by the overwhelming majority of the Chilean Nation. The Government of Chile consequently stated officially that "we can only conclude after three years of negotiations and in view of the results achieved that it is absolutely useless to prolong the situation as brought about by the Working Group " concluding by finally saying , "Consequently, I wish to inform you that the Government of Chile will henceforth insist that the Commission on Human Rights of the United Nations adopt an attitude in strict accordance with law and with the respect it is due and which our Nation vigourosly demands as a sovereign and free Country" (Note from the Chilean Vice-Minister for Foreign Affairs, señor Enrique Valdés Puga, to the Secretary General of the United Nations, Mr. Kurt Waldheim, dated January 5, 1978) .

The Permanent Representative of Chile in Geneva in

formed the Chairman of the Ad-hoc Working Group on January 13, 1978 that he could not accept the latter's proposal to hold a meeting where the representatives of Chile would submit oral or written statements, because, in view of the procedures being applied by the Working Group, any such meeting would be "inappropriate and unnecessary".

The Government of Chile has carefully placed on the record the errors committed by the Group since 1975 which are the consequence of both the procedure range of subjects, including those which are clearly outside its competence and ability. The Government, whose patience is approaching its end, will now set forth the most glaring cases of distortion, grave deflexions of the truth and ignorance of facts of which the Working Group is guilty in the report submitted to the Commission on Human Rights at its XXXIV Session, a draft copy of which was made available to the Chilean Delegación in Geneva only on the evening of February 1, i.e. nine days after its formal adoption by the Working Group and scarcely five days before the opening of the new session of the Commission of Human Rights. In February 1977 the Chilean representative requested the Commission on Human Rights that "if the Working Group's mandate were to be extended, arrangements should be made for its Report or Provisional Report to be made available to the Government of Chile at least one month before the date of the opening of the session of the Body due to study it, so that any comments could be prepared in time and the appropriate documents and proofs be included in the reply. In such a way the Secretariat would be in a position to distribute such Comments in all the working languages sufficiently ahead of time." That request by the Government of Chile was accepted by the Commission, and many of its members urged the Group to see that it was followed.

But, as has been shown, the Group has not fulfilled now its obligation of respecting the most elementary rights of a Member State of the United Nations and of complying with the request of the Commission on Human Rights.

This unpleasant task of drawing attention of the procedures used by the Working Group is being carried out by the Government of Chile in the documents submitted annually to the General Assembly and the Commission on Human Rights.

The Government of Chile's attempts have been of no avail to get the Group to work within the framework of coopera-

tion and deference due to a Member State which, like none other, happens to have displayed utmost respect for the legitimate jurisdiction of the United Nations in its task of developing, and safeguarding the fundamental rights of man.

The Group persists in casting aside every reasonable argument, thereby repeatedly lapsing into unpardonable frivolities.

An example of this occurs in the Introduction to its Report where it alleges that a recent letter from the Vice Minister for Foreign Affairs of Chile to the Secretary General of the United Nations "contained statements and demands which had already been placed before the Group by the Chilean representatives and rejected by it on valid grounds".

What are those "statements and demands" which the Group so lightly turns down, trying to shelter behind the Commission on Human Rights and the General Assembly itself?

Could they be perchance improper petitions coming to disturb the Group in what should be the fulfillment of its mandates infringing, paralyzing or even obstructing the fundamental action of the United Nations in its delicate task of combining its jurisdiction with the respect for the sovereignty of its Member States as required in Article 2, paragraph 7 of the United Nations Charter?

What are the contents of the Vice Minister's note, and what are the "statements and demands" submitted by the Chilean representatives?

In his note of January 5, 1978 to the Secretary General of the United Nations, the Vice Minister writes as follows:

"We accepted in 1975 the establishment of a Working Group responsible to the Commission on Human Rights to inquire into the "present situation" of fundamental human rights in Chile.

That acceptance was, of course, subject to the understanding that, as Chile has repeatedly stated, the procedure to be followed should be determined by agreement between the parties, in accordance with the standards formulated with respect to the matter by the Commission on Human Rights which

appointed the Group.

At the same time, a very important precedent existed with respect to this matter, namely, the procedure laid down in resolution 1503 (XLVIII) of the Economic and Social Council, which establishes the basic rules governing consideration of communications relating to violations of human rights and fundamental freedoms.

Actually, however, not only is the Working Group Adhoc but the procedure it applies is also special and exceptional, having been worked out by the Group itself without the agreement of the Government of Chile and being absolutely and totally arbitrary in character".

The Vice Minister further maintains that, using this procedure as a basis, the Group has sought to interfere in matters not of its concern and has exceeded its powers by failing to limit its reports to actions consonant with its functions and, by such negative conduct, the inevitable consequence of a total lack of due process has violated such principles as the juridical equality of States and non-intervention in internal affairs.

The document continues by saying:

"Ever since this situation arose, the Government of Chile has been making every effort to remedy it, maintaining permanent contact with the Working Group.

Nevertheless, all our initiatives aimed at obtaining an essential minimum of procedural guarantees have been rejected.

It is a matter of record that, despite the extremely serious facts mentioned above, Chile proposed a visit by two members of the Group, who would be designated by mutual agreement and in respect of whose activities minimum rules, likewise mutually agreed upon, would be laid down. That in turn was rejected".

This situation, together with a chronological account of the Government of Chile's initiatives towards reaching an agreement with the Group, will be examined among the pages of these Comments which refer to the Position of Chile and its relations with the Working Group.

To continue, and nevertheless the clear position of the Chilean Government in this matter expressed in the letter sent to the Secretary General and that is developed in the second part of this reply, these Comments will provide a well-founded survey of the allegations contained in the Group's Report, whose absolute lack of veracity might cause surprise were they not already a reprehensible but established practice.

The second part of these Comments includes the Government's protest of the discriminatory treatment of which it has been victim, the non application of universal rules and principles of international law and the absolute absence of a procedure which guarantees objectivity and ecuanimity and also respect for independence and sovereignty for a Member State.

F I R S T P A R T

PRESENT SITUATION OF HUMAN RIGHTS
IN CHILE AN THE AD-HOC WORKING GROUP

C H A P T E R I

POSITION OF THE GOVERNMENT OF CHILE AND ITS RELATIONS WITH
THE WORKING GROUP

The Government of Chile has been and remains absolutely clear and coherent with regard to its position concerning human rights.

It accepts and recognizes the competence of the United Nations to promote, in accordance with Article 55 of the Charter, "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

The Government of Chile has further declared from the start that it is a matter for the state involved, in the exercise of its self-determination and sovereignty, to implement the respect for human rights in accordance with its own social, political and institutional system.

When this Government accepted the establishment of the Ad-hoc Working Group on Chile, it did so as a demonstration of its respect for the jurisdiction of the United Nations in its appropriate sphere, and also because it desired thereby to strengthen the universal action which the United Nations must undertake in order to "promote" respect for human rights. But it made it perfectly clear that "we did not, do not and will not recognize to any organ of the United Nations the competence of a judge, for there is no such provision in any of the current treaties and conventions on the subject of human rights. But what we will do and will continue to do is to extend our cooperation within the concurrent jurisdiction of international organs and of national sovereignty". (Statement by Ambassador Sergio Diez to the Third Commission of the General Assembly of the United Nations, 7 and 10 November 1975).

We shall not recapitulate here in detail the insistent arguments which the Government of Chile has submitted in the course of the last 3 years calling for the provisions of Article 2 paragraph 7 of the Charter to be observed, and for cooperation to be established between the Working Group and

the Government of Chile, so as to render viable the concurrent jurisdiction of the United Nations and of the Chilean Government.

Anyone who cares to study the statements and comments submitted by the Government of Chile, starting with the General Assembly of the United Nations in 1973 and continuing through the meetings of the Commission on Human Rights of 1974, 1975, 1976 and 1977 and the sessions of the General Assembly in those same years, can verify that this Government has sought -almost to the point of being "naive"- to achieve a degree of effective collaboration with the United Nations which would allow for respect for the competence of the former and of the dignity and sovereignty of the latter.

On 21 May 1975 the Government of Chile handed the Working Group a document aimed at "facilitating conversations between the Working Group and the Government of Chile".

The Working Group was asked to accept a procedure adopted by the United Nations, namely ECOSOC Resolution 1503, and to communicate to the Government of Chile any accusations concerning individual cases as soon as they were received, so that the Government of Chile might reply to them promptly and facilitate their solution as might be required.

Later, on 2 June of that same year of 1975, the Representative of Chile transmitted a letter to the Group which, without prejudice to the contents of the earlier document, set forth certain observations with regard to the Rules of Procedure adopted by the Group.

If past facts are recalled here it is primarily to stress once again the position of the Government of Chile, but also because in its Report submitted to the present XXXIV Session of the Commission the Working Group has ignored the letter sent by the Vice Minister for Foreign Affairs of Chile to the Secretary General of the United Nations, and minimized the requests submitted by Chile.

The Report is daring indeed, for the Government of Chile never received any reply at all, neither to the document delivered on 21 May nor to the letter dated 2 June 1975 which put forward the procedure of Resolution 1503 and proposals with regard to the Rules of Procedure which the Group has adopted for itself.

Nor has any reply ever been received, even though

after six months following the delivery of those communications, that contained a reasonable basis agreement and cooperation, the Representative of Chile to the Third Commission of the General Assembly reiterated the Chilean proposals and made concrete referral to the situation which had arisen in the section of his intervention entitled "Letter without reply" (Statement by Ambassador Sergio Diez before the Third Committee of the General Assembly, November 7 and 10, 1975).

It is consequently impossible for anyone to find "facts or details of the discussions and the correspondence" concerning the repeated requests of the Government of Chile, since the Group has systematically ignored them.

If the Group had adopted a reasonable attitude and responded to the cooperation always extended by the Government of Chile, the results might have been very different, and the action of the United Nations on behalf of the universal promotion and safeguarding of human rights would today enjoy a respectability and prestige which are totally lacking.

The methods of work and enquiry followed by the Group have helped to eliminate all possibility of achieving any results of importance.

The Government of Chile has already pointed out in the past that the Reports of the Group do not include all information provided by Chile, and when it includes some data and information it minimizes or distorts it when not deliberately sets it aside without foundation.

So it becomes evident that the Group does not use the information which the Government of Chile provides.

We are therefore only left with the other feature of the "cooperation" of the Working Group: the "meetings and contacts with the Representatives of Chile" to which reference has already been made.

Those "meetings and contacts" take place briefly and sporadically during the sessions of the General Assembly or of the Commission of Human Rights or of the Group itself.

It is obvious that such contacts as take place in New York or Geneva during the sessions of the General Assembly and the Commission on Human Rights are brief and superfi-

cial, and can in no case provide any assistance or clarification, since the Reports have already been adopted by the Working Group and submitted to the above-named bodies.

So we are merely left with the "periods of the meetings of the Working Group".

Those periods are four days in Geneva or New York in the summer, some five or six days which the Group devotes in June or July to meeting in some country of Latin America ("field missions" - Mexico - Caracas) and the longer meeting held on the eve of the annual sessions of the Commission on Human Rights.

The Government of Chile's experience has been that the Group has no interest in discussing any subject of importance with the Representatives of Chile at these meetings. It has been repeatedly asked to submit questions concerning such subjects as may be of concern to it as a result of information or testimony it may have received from all persons, groups or sources in opposition to the Government of Chile since the Group absolutely excludes other possible sectors and witnesses. At no time has it ever been possible to get the Group to question the Representatives of the Government about specific situations, or to do so sufficiently in advance to obtain replies which might in certain cases clear up doubts or avoid the Group the embarrassment of issuing statements that reflect their absolute ignorance and make up disqualifiable falsehoods, as they have in past Reports and repeatedly throughout the present one.

Last July the Representatives of Chile attended a meeting, which lasted some two hours, with the members of the Group in Geneva (25 - 29 July 1977). Three special envoys travelled from Chile for the purpose, joining the Ambassador and Permanent Representative of Chile in Geneva. On that occasion the Group was again asked to put forward enquiries or questions, any points of concern to them. The only point they brought up was to repeat their desire to visit Chile. This once again elicited Chile's request that they draw up appropriate regulations based on ECOSOC Resolution 1503 and the frank but cordial statement that since three years had elapsed from the date the Group had been established without the precedent having once served to try to implement the "universal promotion" of respect for human rights which is the obligation of the United Nations, the Ad-hoc Working Group has become for Chileans, therefore,

the symbol of selectivity and discrimination.

This was the reason, the Chilean Representative explained, why this Government had extended an invitation to the Group to appoint, in agreement with the Chilean Government, two of their members visit Chile once agreement also was reached on the Rules of Procedure based on the ideas repeatedly stressed over these last years.

The Group thereupon asked the Representative of Chile to attend another meeting on the afternoon of the same day for the purpose, as they put it, of considering the points of view already expressed. (The Chilean invitation for two members of the Group mutually agreed upon to visit Chile had already been formally put forward by Ambassador Sergio Diez and confirmed in a cable sent by the Chilean Foreign Minister to the Chairman of the Working Group, señor Allana, on 26 August 1976).

At the very brief meeting of that afternoon in July 1977, the Chairman of the Group (Ambassador Benitez) cautiously stated that the Group obviously had the power to act through a delegation or sub-group, but that such decision had to stem from the Group itself and not at the request of the Government of Chile.

That was all "the contact" amounted to on that occasion.

It should therefore cause no surprise that in January 1978 the Chilean Representative declined an invitation to another "contact" at which it was proposed that he might submit "any relevant written or oral information which Your Excellency's Government may wish to present for its consideration, bearing in mind the Group's terms of reference". (Letter from the Chairman of the Working Group to the Ambassador and Permanent Representative of Chile of 29 November 1977).

The cooperation of the Government of Chile was not requested -as indeed it never had been- for the purpose of clarifications, denials, corrections or taking steps about any charges which the Group had received or intended to include in its Report.

It thus amounted to a simple invitation which could only serve for the Government of Chile to reiterate the complaint which it had lodged for three years with the Group, a

straight complaint which had been of no use to Chile but which had enabled the Group to claim also made use of every opportunity to have contacts with the Representatives of the Government of Chile and examined and considered all the information, both oral and written, submitted by the Government of Chile directly to the Group" ...&c.. (Para. 3 of the Working Group's Report. Doc. E/CN.4/1221. 10 February 1977).

It is all the foregoing facts, in addition to those pointed out in the Introduction to these Comments, which have led the Government of Chile to the conclusion that it is "absolutely useless to prolong this situation in the form brought about by the Working Group".

C H A P T E R I I

NATIONAL CONSULTATION

The preconceived approach of the Working Group emerges yet again in the comments contained in its Report on the National Consultation of 4 January 1978.

Paragraphs 36 - 47 of the Report referring to this event contain a number of gross errors as well as several patent falsehoods.

1.- Background of the Consultation and the President's speech.

In his speech of 21 December 1977 the President of Chile said that the latest Resolution adopted by the United Nations against Chile went beyond all acceptable limits, described an alleged Chilean reality which was completely devoid of truth, offended the dignity of Chile, interfered in its internal problems and was of grave significance and political intent.

For those reasons he felt it necessary to consult the opinion of the people of Chile on the subject.

The Report goes to extraordinary lengths to present the event as though it were a sinister manoeuvre. To reach its objective the Group used every kind of petty intrigue, alleged irregularities and biased interpretation.

Petty intrigue showed up in its efforts to present the President of Chile as "casting aspersions on the countries which has voted in favour of the Resolution including the Great Powers, the Western democracies and the socialist countries, as well as on the Ad-hoc Working Group on Chile".

It will be noticed that the list of "slandered" countries in the Report is exhaustive. Not content with noting that it embraced every country in favour of the Resolution, the Group completely reveals its aim by adding "the Great Powers", "the Western democracies", "the socialist countries". With that the Group intends to set the Government against the

most different ideological and political points of view existing today.

Anyone who reads the text of the President's speech objectively can see that it is a vordeful reply, a reaction which does not conceal its indignant protest, a statement which is the logical outcome of having waited long and in vain for the Group to show at least sometimes awareness of the Government's insistent clamour for just treatment, for respect for fair standards of procedure, for an end to the unconcealed partiality and discrimination displayed towards Chile.

But no one could possibly point to a single passage suggesting slander.

It is not a calumny to declare that the General Assembly Resolution "goes beyond all acceptable bound in its falsehood, injustice and insult to our Nation".

Nor is it a calumny to maintain that "the resolution describes an alleged situation in Chile so utterly remote from the truth that, but for the insolence with which it affronts the dignity of our Country and the seriousness of its political significance and intent; it would deserve to be ignored by Chile with the contempt of indifference".

Nor is it a calumny but rather the statement of a proven and reported fact, to say "impartial testimony means nothing to the United Nations".

It is not a calumny to say that "while verbally in words all admit that inquiries into human rights should be conducted by objective and universally applicable methods, but when the time comes to adopt Resolutions which will put this into practice, they are invariably rejected; that does not present the hypocrisy of selective discrimination against us from continuing".

It is not a calumny, but the truth which has recently been repeated in public by the Director of the Division of Human Rights of the United Nations and by the Ambassador Representative of a "Great Power" on the Commission on Human Rights, to point out that "meanwhile the dozens of nations whose governments really do violate human rights, totally and systematically, remain deliberately forgotten".

It amounts to denouncing once more what appears as an abysmal truth in the very Agenda of the current session of the Commission on Human Rights, which only mentions two countries by name, Chile and Cyprus: that is: "the suffering of those oppressed peoples is of no concern to the United Nations, because faced with the outrages of the mighty, or of those who are protected by some Great Power, it finds the cowardly complicity of silence more convenient".

None of the foregoing are calumnies. Only the Working Group concerned with concealing its great responsibility and seeking protection behind the Commission on Human Rights and the General Assembly, could mistake a proud protest for a calumny.

2.- An intrigue and a great falsehood. Resignation of the Controller.

Another small intrigue but a great falsehood consists in constraisting the views of the Controller General of the Republic and of the Excecutive and stating (paragraph 43) that "On the same day that the Controller of the Republic rejected the decree establishing the National Consultation it was announced in Santiago that he had been sent into retirement"

Everything contained in the Report on this subject is a lie.

As reported in the Chilean newspapers (which the Group has shown that it reads but only quotes in cases which suit its purpose for supporting its own theories), the Controller General, señor Hector Humeres, let it be know on 5 December 1977 that he intended to retire as of January 1st. 1978. (See Annex NQ 5 a) photocopy of the page of the Santiago papel "El Mercurio" of 7 December 1977 with the headline "Controller to retire on 1st. January"; b) photocopy of the page of the Santiago paper "La Tercera" of 6 December with the headline "The Controller General of the Republic to retire"; c) photocopy of the page of "La Tercera" of 13 December showing a photograph of President Pinochet with the Controller, señor Humeres, at a meeting on the previous day (12 December) when the "Controller informed the President of his retirement".)

It is therefore on record that the Chilean press on 6 and 7 December 1977 published the news of the Controller's

retirement due to take effect on 1 January 1978, and that on 12 December señor Humeres informed the President officially and in person of his decision to retire as of 1 January 1978.

It was on 21 December 1977 that the President made known his intention of summoning all Chileans over 18 years old to a Consultation, saying that within a few hours the Government would publish the details of how the National Consultation would be carried out.

On December 27, the Government sent to the Office of the Controller General the text of Decree Nº 1308 calling for a National Consultation and laying down its procedure. (Annex Nº 4.a.).

On 28 December the Controller General returned Decree Nº 1308 to the Ministry of the Interior, giving his reasons for not being able to proceed with it. (Annex Nº 4.b. photocopy of newspaper reports of 29 December).

The Government proceeded to study the reasons and comments given by the Controller, and drafted a new decree with the appropriate amendments, which the Controller General's office accepted. (Annex Nº 4.c.).

As can be seen, the retirement of the Controller, señor Humeres, was announced 11 days before the General Assembly approved the Resolution concerning Chile, 15 days before the speech of the President announcing his intention of calling for a National Consultation, 21 days before the Decree concerned was drafted and 22 days before the Controller sent it back for reasons and grounds which the Government accepted and incorporated in the new Decree.

Providing this reply to the Working Group's Report with the above clear and irrefutable facts does not mean recognition of the Group's right, which it does not possess and cannot acquire, to interfere in matters which are within the sovereign rights of a nation. Our purpose in so doing is to point out once more, and with proofs, that the Group is guilty of flagrant and shameful distortions of the truth.

3.- The Consultation and the Armed Forces.

Paragraph 38 of the Report states that the Consultation "should have been held under conditions of security and

guarantees assured by the armed forces and the carabineers".

The way in which the Report sets forth the preparations for the Consultation and the conditions under which it was held furnishes yet another proof of the ignorance and partiality of their evaluation of the facts.

"The conditions of security and guaranties assured by the armed forces and carabineers" are precisely what has been in existence in Chile since January 1941 when the Election Law, drafted and implemented by the Popular Front Government, entrusted those very forces with the responsibility for elections. (Annex

4.- Some opinions. The Group only quotes those of the opposition.

The Group cites the report of someone who attached a memorandum "prepared in consultation with eminent Chilean jurists", in which a passionate study revealing little depth or knowledge is made of "the constitutionality, legality, organization and handling of the National Consultation".

It cites ex-Senador Eric Schnake, who left Chile for Paris on 24 December 1977 (11 days before the National Consultation), testifying to the Group on the subject of the quality of the paper on which the voting ballots were printed, on the way the votes had been counted, &c..

Elsewhere the Report includes, in Annex IX, a statement made by former President Eduardo Frei at a press conference which was broadcast by radio and television.

Of course all those statements and opinions quoted by the Group come from persons opposed to the Government of Chile.

It might be useful to ask whether the Group did not find any valid arguments among the rich flow of opinions from eminent jurists -genuine and not anonymous-, politicians, teachers and former Presidents of the Republic who, besides making serious observations, come out in favour of the Consultation.

It must be remembered that, besides ex-President Frei, there are two former Presidents living: Gabriel González Videla (1946-1952) and Jorge Alessandri (1958-1964). Both enjoy as much or higher degree of respect and prestige than señor Frei. The former, González Videla, a lawyer, became President of the Popular Front, (1937-38) President of the Ra

dical Party, Senator, Ambassador to France and Brazil, before being elected Presidente of the Republic in 1946. The latter, Alessandri, a civil engineer, was a university professor, an independent deputy for Santiago, President of the Caja de Credito Hipotecaria, Minister of Finance, independent Senator for Santiago and President of the Republic from 1958 when he defeated señor Allende and señor Frei. In 1970 he was presidential candidate, obtaining only 0.9% less votes than señor Allende and clearly defeating the Christian-Democrat candidate.

What were the opinions of those distinguished Chilean public figures? Why does the Report not give their reactions and thus lend a balanced and objective note to the judgements it pronounces?

It cannot be ignored that those who expressed doubts, warnings, objections and reflexions on the call for a National Consultation were for the greater part agreed in repudiating the Resolution which, based on the Report of the Working Group, had been adopted by the General Assembly of the United Nations.

Don Alejandro Silva Bascuñan, the eminent professor of Constitutional Law and former President of the Colegio de Abogados (Bar Association of Chile) said "....I believe that the Consultation will be of help to the country if it is based on clear premises, and that it will serve to strengthen the indispensable unity in defence of our country's integrity and at the same time respect for legitimate differences of opinion..." (Annex 4.d. photocopy statement of the magazine "Que Pasa" of 4 January 1978).

Another highly reputed professor of Constitutional Law, don Carlos Cruz Coke, commented "In comparative law some authors maintain that there is no difference between plebiscite and referendum. But others hold that a plebiscite is a popular consultation promoted with the object of awarding greater or lesser powers to an authority whereas a referendum is a consultation with the popular masses on the subject of a specific constitutional or legislative text.

"A study of what will occur in Chile on 4 January reveals that it combines both features, which is why it was called a National Consultation. On the one hand its purpose was for the Nation to confirm the legitimacy of the Government

in power since 1973 so that it may continue its institutional process, and on the other to repudiate an international agreement seeking to impose from without certain forms of institutional life ..." Annex 4.d. photocopy of "Que Pasa" of 4 January 1978).

Among the Annexes are some of the many opinions, about the National Consultation, both critical and favourable, published widely throughout, newspapers and magazines in Santiago, without any restriction whatever.

That freedom of expression concerning the National Consultation of 4 January was widely recognised by the great majority of foreign newspapermen and impartial observers who were in the country. The Group's Report only gives unfavourable comments.

The Group notes that some members of the Christian-Democratic party called for voting "NO", but passes over in silence the fact that other members, also of the former Christian-Democratic party, called for a "YES" vote, as in the case of señor Juan de Dios Carmona and señor William Thayer, both former ministers in ex-President Frei's cabinet.

It mentions that after the Consultation there were articles in "Le Monde" and in the "International Herald Tribune" opposing the Consultation, but omits that there were other press articles in favour, including one already quoted by the Group, namely an editorial from the "Washington Post" which the "International Herald Tribune" reproduced in full.

It prefers to quote the opinions of some "reliable sources" which were not in Chile on 4 January, while displaying no interest whatever in finding out what people thought who were on the spot, among them 46 newspapermen from abroad who applied for accreditation at the Ministry of Interior. These 46 newsmen comprise only 30% of those entering Chile for the occasion. 70% entered as "tourist" and did not apply for special credentials.

Here is the list!

DELEGACION PERMANENTE DE CHILE
 ANTE LAS ORGANIZACIONES INTERNACIONALES
 GINEBRA

- 20 -

Paulo Sotero Nuñez Marque	Semanario "Veja"	Brazil
Aluizio Machado	Journal do Brasil	Brazil
Carl Sorensen	CBS News Nueva York	Denmark
Franco Catucci	RAI-Telegiornale L	Italy
José González Cano	Semanario "Gaceta Ilustrada"	Spain
Angel Luis de la Calle	"El País" Madrid	Spain
Morguia	NBC EE.UU.	Argentina
Alfredo Amadeo Morresi	Visnews Television	Australia
John Samir Arden	Television Alemana ARD	Germany
Wolfgang Hohannes Gahbauer	Television Alemana ARD	Germany
Axel Jesse	Rede Globo TV Brasil	Argentina
Naum Welyanovsky	ZDF Television Alemana	Germany
Richard Stein	ZDF Television Alemana	Germany
Klaus Manfred Exkstein	ZDF Television Alemana	Germany
Guido Cavalcante	CBS News Nueva York	EE.UU.
David Harmon Dow	CBS News Nueva York	EE.UU.
Michael Peter Sondow	Telediario de la RAI	
Italo Moretti	Radiotelevision Italia- na	Italy
Giovanni Savelli	Telediario de la RAI	
	Radiotelevision Italia- na	Italy
Sergio Osvaldo Aviles	Visnews Londres	Argentina
Frank Manitzas	NBC News	EE.UU.
Jan Cornelis Kuipes	Ikon-TV	Holland
Wessel Van Der Hammer	Ikon-TV	Holland
Deodaat Visser	Ikon-TV	Holland
Armando Cerone	RAI-TV Italiana	Italy
Derek John Wilson	BBC de Londres	G. Britain
Armando Ruben Vidal	Diario Clarin BS.AS.	Argentina
Slobodan Vukmirovic	Ag. Noticiosa Tanjug	Yugoslavia
Antonio José Vulin	ARD. TV. Alemana	Argentina
Dieter Rudolf Zecher	AG. D.P.A. Alemania	Chile
Peter Wendt	TV. Alemana ARD	Germany
Pedro Sanchez Queirolo	Diario La Vanguardia	Spain
René Arteaga	Diario Uno más Uno	Salvador
Enrique Berti	Diario La Voz de Libres	Argentine
Carlos Bañales	Ag. Reuter Latin	Uruguay
Mauro Bellabarca	RAI- Italiana	Italy
Carlos Ernesto Campos	Revista Siete Díaz	Argentina
Arturo Cerviño B.	Diario El País	Uruguay
Eduardo Ruben Di Baia	The Associated Press	Argentina
Carlos Hector Flores	Revista Somos	Argentina
Paulo Guerra Rocha	T.V. Globo	Brazil

Palle Hermund	Radio Dinamarca	Denmark
Gustavo Landivar	Revista Somos	Argentine
Johannes Martin Gester	Frankfurter Allgemeine	Germany
Sergio Motta Mello	T.V. Globo	Brazil
Rosanna Magni Ortega	Ag. DPA Alemania	Chile
Rodolfo Rafael Rivera	Ag. United Press Inter- national	Argentine

5.- Result of the National Consultation.

The final results of the National Consultation were as follows: 4,177,064 votes in favour (75.04%); 1,131,115 votes against (20.32%) and 258,109 null and void or blank (4.64%). (For official figures district by district see Annex 4.g.).

The honesty of this electoral act is clearly reflected in a letter written by Mr. John H. Hughes, the American journalist, to the Director of the Orbe News Agency in Santiago and published on 24 January 1978 in "El Mercurio" (Annex 4.f.):

"Señor
Alvaro Pineda de Castro,
Director de la Agencia Orbe,
Santiago.

Dear Friend,

On reaching home I wish to thank you for your personal kindnesses to me during my recent stay in Santiago and for your professional help with my reports on the referendum of the 4th inst..

"Although I disagree with the political system imposed in Chile by General Pinochet, I recognize that the voting was honest and that the people were able to express their feelings freely. Thanks to you I was able to see how long queues of men and women voted without pressure, and later to watch the counting of the votes.

"With cordial greetings from your friend
"John H. Hughes".

On top of that explicit recognition the non existence of fraud in the Consultation is clear due to the fact that nobody in Chile not even opposition members have stated a specific claim in this respect.

And it could not have been possible because if the scrutinies of the votes were public and anyone could participate in them -as journalists and christian democrats did- fraud would inevitably have been discovered.

On the other hand, Chile has been unfairly indicted for having interrupted a centenary democratic tradition. This same argument permits now affirm that a country with more than one century of electoral experience is not possible to be cheeted with a fraud in the Consultation.

C H A P T E R I I I

GENERAL REPLY TO THE CONTENTS OF CERTAIN CHAPTERS OF THE REPORT

A.- CONSTITUTIONAL AND LEGAL DEVELOPMENTS.

1.- The State of Siege and other exceptional security measures.

In this connection the Government does not consider it necessary to comment on the State of Siege.

All the Comments on previous Reports have contained extensive explanations covering the nature, justification, categories, characteristics and consequences of the State of Siege.

In spite of that, the Report keeps returning to the subject with painful insistence. The Government believes that facts speak for themselves better than repetitious explanations to which the Group pays no attention and which it is unwilling to understand.

2.- The State of Emergency.

The Report of the ad hoc Working Group (paragraph 28) says that it "has recently received a study of the State of Emergency in Chile" contained in a document attributed to the "First Secretary of the Spanish Socialist Party, señor Felipe González". The "study" refers to the "State of Emergency established by appointing military commanders for the various Zones of the country", as though such appointments were a novelty introduced by the present regime.

The three short days spent in Chile by the distinguished Secretary of the Spanish Socialist Party were obviously not long enough for him to become an "instantaneous expert" on Chilean legislation; he may possibly have relied on one of the anonymous "reliable sources" to which the Group so frequently resorts and which it quotes with such undisguised selish. But in that case it was reasonable to hope that the highest authority of the Spanish Socialist Party would have sought his information in Chile from one of the outstanding Chilean comrades whom he visited during his brief stay in Santiago. Such socialist comrades failed in their loyal duty if they did not tell him that "the appointment of military commanders" at times and did not show señor Felipe González a detailed list of the

innumerable occasions when it happened under the Popular Unity Government under a socialist President, together with the promulgation and texts of the various Decrees and Proclamations by means of which President Allende kept the country almost uninterruptedly under "State of Emergency".

To set this omission aright we list below the Decrees whereby the Government of señor Allende proclaimed a State of Emergency in the various zones of the country between the end of 1970 and 24 August 1973, along with the Decrees appointing members of the Armed Forces as Area Commanders:

- 1) Decree Nº 284 of 4 December 1970.
Area Commander appointed for the Province of Santiago: Brigadier General don Orlando Urbina Herrera.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.
- 2) Decree Nº 23 of 11 January 1971.
Area Commanders appointed for the following Provinces:
 - a) Concepción, Arauco and Cautin: Brigadier General Eraldo Rodríguez T.
 - b) Valdivia and Osorno: Colonel Hernán Hiriart Laval.
 - c) Magallanes : Brigadier General José Manuel Torres de la Cruz.(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.
- 3) Decree Nº 76 of 17 February 1971.
Area Commander appointed for the Province of Valparaíso: Rear Admiral Luis Eberhard Escobar.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.
- 4) Decree Nº 101 of 19 March 1971.
Area Commander appointed for the following Provinces and Departments :
 - a) Province of Tarapacá: Brigadier General Hernán Brady Roche.
 - b) Department of Arica: Lieutenant-Colonel Sergio Covarrubias Sanhueza.
 - c) Province of Antofagasta : Colonel Gastón Escobar Herrera.
 - d) Province of Atacama : Lieutenant-Colonel Manuel de la Fuente Borge.

- e) Province of Coquimbo: Lieutenant-Colonel Pedro Ewing Hodar.
- f) Province of Aconcagua: Colonel Pedro Yochum Jimenez.
- g) Province of Santiago: General Augusto Pinochet Ugarte.
- h) Provinces of O'Higgins and Colchagua: Colonel Enrique Morrel Donoso.
- i) Provinces of Cúricó and Talca: Colonel Juan Soto Miranda.
- j) Provinces of Linares and Maule : Colonel José Domingo Ramos Albornos.
- k) Province of Ñuble : Lieutenant-Colonel Luciano Díaz Neira.
- l) Department of Talcahuano and Tomé: Rear Admiral Carlos Chubretovich Alvarez.
- m) Province of Bío Bío: Lieutenant-Colonel Cristian Becker Duhau.
- n) Province of Llanquihue and Chiloé : Air Force Colonel Rafael Ordenes Muñoz.
- o) Province of Aysen: Colonel Jaime Díaz Donoso.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.

5) Decree Nº 146 of 8 January 1971.

Proclamation of State of Emergency in the Province of Santiago and appointment of General don Augusto Pinochet Ugarte as Military Commander.
(signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.

6) Decree Nº 165 of 9 July 1971.

Proclamation of State of Emergency in the Province of Santiago and appointment of General Augusto Pinochet Ugarte as Military Commander.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.

7) Decree Nº 166 of 9 July 1971.

Proclamation of State of Emergency in the Province of Valparaíso and appointment of Rear Admiral don Luis Eberhard Escobar as Military Commander.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.

8) Decree Nº 167 of 9 July 1971.

Proclamation of State of Emergency in the Province of Aconcagua and appointment of Colonel don Pedro Yochun Jimenez as Military Commander.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.

- 9) Decree Nº 168 of 9 July 1971.
Proclamation of State of Emergency in the Province of Coquimbo and appointment of Lieutenant Colonel don Pedro Ewing Hodar as Military Commander.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.
- 10) Decree Nº 169 of 9 July 1971.
Appointment as Zone Commander for the State of Emergency in the Province of Coquimbo and Aconcagua of Brigadier General don Orlando Urbina Herrera.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.
- 11) Decree Nº 200 of August 1971.
Proclamation of the State of Emergency in the Province of Aysen and appointment of Colonel don Jaime Díaz Donoso as Military Commander.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.
- 12) Decree Nº 246 of 2 December 1971.
Proclamation of State of Emergency in the Province of Santiago and appointment of General don Augusto Pinochet Ugarte as Military Commander.
(Signed) Salvador Allende, José Toha and Alejandro Ríos Valdivia.
- 13) Decree Nº 77 of 23 February 1972.
Proclamation of State of Emergency in the Province of Aysen and appointment of Colonel don Jaime Díaz Donoso as Military Commander.
(Signed) Salvador Allende, Hernán del Canto and José Toha.
- 14) Decree Nº 133 of 24 April 1972.
Appointment of Vice Admiral don José Toribio Merino Castro as Area Commander for the Province of Valparaíso.
(Signed) Salvador Allende, Hernán del Canto and José Toha.
- 15) Decree Nº 196 of 21 August 1972.
Proclamation of State of Emergency in the Province of Magallanes and appointment of General don Manuel Torres de la Cruz as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.

- 16) Decree Nº 197 of 21 Augusto 1972.
Proclamation of State of Emergency in the Province of Santiago and appointment of Brigadier General don Héctor Bravo Muñoz as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 17) Decree Nº 127 of 5 September 1972.
Appointment of Area Commanders to the following Provinces :
- a) Province of Tarapacá: Brigadier General don Carlos Forestier H.
 - b) Province of Antofagasta: Brigadier General don Joaquin Lagos Osorio.
 - c) Province of Aconcagua: Colonel don Orlando Ibañez Alvarez.
 - d) Province of Santiago: Brigadier General don Héctor Bravo Muñoz.
 - e) Province of Curicó and Talca : Lieutenant-Colonel don Rafael Ortiz N.
 - f) Province of Bío-Bío : Colonel don Alfredo Rehren Pulido.
 - g) Province of Malleco: Lieutenant-Colonel don Elías Bacigalupo S.
 - h) Province of Valdivia and Osorno: Colonel don Guillermo López Vargas.
- (Signed) Salvador Allende, Jaime Suarez and José Toha.
- 18) Decree Nº 231 of 11 October 1972.
Proclamation of State of Emergency in the Province of Curicó and Talca and appointment of Colonel don Rafael Ortiz Navarro as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 19) Decree Nº 232 of 12 October 1972.
Proclamation of State of Emergency in the Province of Linares and Maule and appointment of Colonel don José Ramos Albornoz as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 20) Decree Nº 234 of 12 October 1972.
Proclamation of State Emergency in the Province of Valparaíso and appointment of Vice Admiral don José Toribio Merino Castro as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 21) Decree Nº 235 of 12 October 1972.
Proclamation of State of Emergency in the Province of Santiago and appointment of Brigadier General don Héctor Bravo Muñoz as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.

- 22) Decree Nº 236 of 12 October 1972.
Proclamation of State of Emergency in the Province of O'Higgins and Colchagua and appointment of Colonel Enrique Morel Donoso as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 23) Decree Nº 237 of 12 October 1972.
Proclamation of State of Emergency in the Province of Ñuble and appointment of Colonel don Luciano Díaz Neira as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 24) Decree Nº 238 of 12 October 1972.
Proclamation of State of Emergency in the Provinces of Concepción, Arauco and Cautín and appointment of Brigadier General don Ervaldo Rodríguez T. as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 25) Proclamation of State of Emergency in the Department of Talcahuano and Tomé and appointment of Rear Admiral don Carlos Chubretovic Alvarez as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 26) Decree Nº 240 of 12 October 1972.
Proclamation of State of Emergency in the Province of Biobío and appointment of Colonel don Alfredo Rehren Pulido as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 27) Decree Nº 242 of 12 October 1972.
Proclamation of State of Emergency in the Province of Valdivia and Osorno and appointment of Colonel don Guillermo López Vargas as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 28) Decree Nº 243 of 13 October 1972.
Proclamation of State of Emergency in the Provinces of Llanquihue and Chiloé and appointment of Air Force Colonel don Sergio Leigh Guzmán as Military Commander.
- 29) Decree Nº 245 of 16 October 1972.
Proclamation of State of Emergency in the Province of Aconcagua and appointment of Colonel don Orlando Ibañez Alvarez as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.

- 30) Decree Nº 245 of 17 October 1972.
Proclamation of State of Emergency in the Province of Malleco and appointment of Lieutenant Colonel Elios Bacigalupo Soracce as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 31) Decree Nº 248 of 19 October 1972.
Proclamation of State of Emergency in the Province of Aysen and appointment of Colonel don Jaime Díaz Donoso as Military Commander.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 32) Decree Nº 251 of 29 October 1972.
Appointment of Colonel don Odlanier Mena Salinas as Area Commander for the Provinces of Curicó and Talca.
(Signed) Salvador Allende, Jaime Suarez and José Toha.
- 33) Decree Nº 309 of 27 December 1972.
Appointment of General don Orlando Urbina Herrera as Area Commander for the Province of Santiago.
(Signed) Salvador Allende, Carlos Prats González, and José Toha.
- 34) Decree Nº 47 of 1 February 1973.
Appointment of Area Commanders to the following Provinces and Departments:
- a) Department of Arica : Colonel don Odlanier Mena Salinas
 - b) Province of Atacama= Lieutenant-Colonel don Oscar Haag Blaschke.
 - c) Province of Coquimbo: Lieutenant-Colonel don Ariosto Lapostol Orrego
 - d) Province of Aconcagua: Lieutenant-Colonel don Héctor Orozco Sepúlveda
 - e) Province of O'Higgins: Lieutenant-Colonel don Cristian Acherknecht San Martín
 - f) Province of Colchagua: Lieutenant-Colonel don Hernan Brantes Martínez.
 - g) Provinces of Curicó and Talca: Lieutenant-Colonel don Efraín Jaña Girón
 - h) Provinces of Linares and Maule: Colonel don Gabriel del Río Espinoza
 - i) Province of Ñuble= Lieutenant-Colonel don Juan G. Toro Dávila
 - j) Provinces of Concepción and Arauco: Colonel don Washington Carrasco Fernández
 - k) Departments of Talcahuano and Tomé: Naval Captain don Jorge Paredes W.

- l) Provinces of Cautin, Valdivia and Osorno: Brigadier General don Héctor Bravo Muñoz.
 - m) Provinces of Llanquihue and Chiloé: Air Force Colonel don Sergio Leigh Guzmán
 - n) Province of Aysen: Lieutenant-Colonel don Humberto Gordon Rubio.
(Signed) Salvador Allende, Carlos Prats González and José Toha.
- 36) Decree Nº 142 of 5 May 1973.
Proclamation of State of Emergency in the Province of Santiago and appointment of Brigadier General don Mario Sepúlveda Squella as Military Commander.
In its first preface it says: that "The climate of social unrest prevailing in the Province of Santiago, with a series of events which have been steadily becoming more serious, including seizure and blocking of roads and paralyzing services vital to the population and even confrontations between various groups of extremists ending in yesterday's serious incidents, has caused great unrest and tension among the citizens the consequences of which are hard to foretell;"
(Signed) Salvador Allende, Gerardo Espinoza and José Toha.
- 37) Decree Nº 151 of 10 May 1973.
Proclamation of State of Emergency in the Province of O'Higgins and appointment of Lieutenant-Colonel don Cristian Ackerknecht San Martín.
(Signed) Salvador Allende, Gerardo Espinoza and José Toha.
- 38) Decree Nº 196 of 27 June 1973.
Proclamation of State of Emergency in the Province of Santiago and appointment of Brigadier General don Mario Sepúlveda Squella as Military Commander.
- 39) Decree Nº 204 of 29 June 1973.
Proclamation of State of Emergency in the following Provinces and Departments and appointment of the following as Military Commanders:
- a) Province of Tarapacá: Brigadier General don Carlos Forestier H.
 - b) Department of Arica: Colonel don Odlanier Mena Salinas
 - c) Province of Antofagasta: Brigadier General don Joaquin Lagos O.
 - d) Department of El Loa: Colonel don Eugenio Rivera Desgroux
 - e) Province of Atacama: Lieutenant-Colonel don Oscar Haag Blanschke

- f) Province of Coquimbo: Lieutenant-Colonel don Ariosto Lapostol D.
- g) Province of Aconcagua: Colonel don Héctor Orozco Sepúlveda
- h) Province of Valparaíso: Vice Admiral don José Toribio Merino Castro
- i) Province of Santiago: Brigadier General don Mario Sepúlveda S.
- j) Province of O'Higgins: Colonel don Orlando Ibañez Alvarez.
- k) Province of Colchagua: Lieutenant-Colonel don Hernán Brantes M.
- l) Provinces of Curicó and Talca: Lieutenant-Colonel don Efraín Jaña G.
- m) Provinces of Linares and Maule: Colonel don Gabriel del Río Espinoza.
- n) Province of Ñuble: Colonel don Juan G. Toro Dávila
- o) Provinces of Concepción and Arauco: Brigadier General don Eashington Carrasco Fernandez.
- p) Departments of Talcahuano and Tomé: Rear Admiral don Jorge Paredes Wetzer.
- q) Province of Bío-Bío: Colonel don Alfredo Rehren Pulido.
- r) Provinces of Malleco: Lieutenant-Colonel don Elios Bacigalupo S.
- s) Provinces of Cautín, Valdivia and Osorno: Brigadier General don Héctor Bravo Muñoz
- t) Provinces of Llanquihue and Chiloé: Air Force Colonel don Sergio Leigh Guzmán
- u) Province of Aysen: Colonel don Humberto Gordon Rubio
- v) Province of Magallanes: General don Manuel Torres de la Cruz.
(Signed) Salvador Allende, Gerardo Espinoza and José Toha).

40) Decree Nº 223 of 1 August 1973.

Appointments of Area Commanders to the following Provinces and Departments:

- a) Province of Tarapacá: Brigadier General don Carlos Forestier H.
- b) Department of Arica: Colonel don Odlanier Mena Salinas
- c) Provinces of Antofagasta: Brigadier General don Joaquín Lagos Osorio
- d) Department of El Loa: Colonel don Eugenio Rivera Desgroux
- e) Province of Atacama: Lieutenant-Colonel don Oscar Haag Blanschke
- f) Province of Coquimbo: Lieutenant-Colonel don Ariosto Lapostol Orrego
- g) Province of Aconcagua: Colonel don Héctor Orozco Sepúlveda
- h) Province of Valparaíso: Vice Almiral don José Toribio Merino Castro
- i) Province of Santiago: Brigadier General don Mario Sepúlveda Squella

- j) Province of O'Higgins: Lieutenant-Colonel don Cristian Ackerknecht San Martín
 - k) Province of Colchagua: Colonel don Hernán Brantes Martínez.
 - l) Province of Talca: Lieutenant-Colonel don Efraín Jaña G.
 - ll) Province of Curicó: Lieutenant-Colonel don Sergio Angelotti Cádiz
 - m) Province of Linares: Colonel don Gabriel del Río Espinoza
 - n) Province of Maule: Lieutenant-Colonel don Ruben Castillo Whyte
 - ñ) Province of Ñuble: Colonel don Juan G. Toro Dávila
 - o) Provinces of Concepción and Arauco: Brigadier General don Washington Carrasco Fernández
 - p) Departments of Talcahuano and Tomé: Rear Admiral don Jorge Paredes Wetzer
 - q) Provinces of Bío Bío: Colonel don Alfredo Rehren Pulido
 - r) Province of Malleco: Lieutenant-Colonel don Elios Baccigalupo Soracco
 - s) Department of Angol: Lieutenant-Colonel don Alejandro Morel Donoso
 - t) Province of Cautin: Colonel don Hernán Ramírez Ramírez
 - u) Department of Temuco : Lieutenant-Colonel don Pablo Iturriaga Marchesse
 - v) Provinces of Valdivia: Brigadier General don Héctor Bravo Muñoz
 - w) Province of Osorno: Lieutenant-Colonel don Lizardo Abarca Maggi.
 - x) Province of Llanquihue and Chiloé : Air Force Colonel don Sergio Leigh Guzmán
 - y) Province of Aysen: Colonel don Humberto Gordon Rubio
 - z) Province of Magallanes: General don Manuel Torres de la Cruz.
- (Signed) Salvador Allende, Carlos Briones and Clodomiro Almeyda.
- 41) Decree Nº 238 of 11 August 1973.
Appointment of Rear Admiral don Daniel Arellano McLeod as Area Commander for the Province of Valparaíso
(Signed) Salvador Allende, Orlando Letelier and Carlos Prats.
- 42) Decree Nº 262 of 24 August 1973.
Appointment of Brigadier General don Hernan Brady Roche as Area Commander for the Province of Santiago.
(Signed) Salvador Allende and Orlando Letelier

B.- THE LIBERTY AND SECURITY OF PERSON, EXILE AND TORTURE.

In chapters 2,3 and 4 of its Report, the Working Group refers to various situations set out below.

1.- Arrests, detentions and the right to a fair trial.

Under this heading the Report of the Working Group claims to prove the existence in Chile of illegal arrests, detention with no apparent grounds, unfair trials and sentences beyond any judicial standard.

In this connection, the Government of Chile wishes to make it clear once again that the arrests followed an order especially issued for the purpose to comply with the laws in force; that the detentions have been carried out in accordance with the appropriate legal provisions; the trials have followed the appropriate procedure and the sentences handed down are those fixed by the prevailing laws.

Furthermore, as is stated in document A/C.3/32/6: "the Chilean courts, whether civil, criminal or military courts, will continue to fulfill their task of investigating situations stemming from offences and will hand down sentences foreseen in the law".

In addition, the Government of Chile states that there is not one detainee in the country under the provisions of the State of Siege. Under the terms of this law of exception only 12 persons have had restrictions imposed on their liberty of movement. They are in the city of Arica and living under perfect conditions.

What the Report suggests is therefore false in the sense that these people are under arrest (see paragraph 53). It is also false (see paragraph 52) that 7 persons are detained in the city of Andacollo. Finally, as the Group itself says, all the persons mentioned in paragraph 55 are at liberty.

No war time Court Martial whatever is sitting, Nevertheless the Government of Chile again declares that, in accordance with the terms of Article 8 of Decree Law N° 1009, they will start to function if offences listed in Articles 4, 5 item a), 5 item b) and 6 items c), d) and e) of the State Security Law are committed. (Subversion, kidnapping and terrorism).

One of the cases brought up in the Report. Red September Terrorist Group.

On 13 september 1977 the Ministry of the Interior requested the Second Military Prosecutor's Office of Santiago to put the following persons, all members of the Red September Terrorist Group, on trial:

- Jorge Palma Pacheco,
- Victor Armando Reyes Nuñez,
- Manuel Segundo Román Muñoz,
- Luis Alberto Flores Baeza,
- José Luis Angulo Retamales,
- Luis Hernán Pavez Chateau.

The above Group is apparently responsible for the following offences:

- 1.- Burglary by intimidation at the "Sagues" chemist shop, Avenida Carlos Valdovinos Nº 1067, Santiago, on 26 July 1977. The incident was reported to the First Criminal Court of Santiago dealing with major offences and the case is Nº 45.933-1.
- 2.- Burglary by intimidation at the Estacion Central branch office of the Banco Osorno y la Union on July 11, 1976. The incident was reported to the Fifth Criminal Court of Santiago.
- 3.- Burglary at the Club Hipico de Santiago, Martinez de Rozas branch, on July 11, 1976. The incident was reported to the Ninth Criminal Court of Santiago.
- 4.- Burglary by intimidation at a private residence at calle 10 de julio, Nº 683, on July 20, 1976.
- 5.- Burglary by intimidation at a "RECSA" company in Santiago in September 1976.

At the time of arrest, a search was conducted at the home of Luis Alberto Flores Baeza, member of the Group, residing at calle Saturno Nº 5080 in Santiago where hidden underground were found:

One "Meusser" rifle manufactured by "Dauche-Waffen-Und" (Germany), calibre 7mm. series 537.

One Shotgun "Sawn-off", "BRASCIA", Italian manufacture, two tubes, calibre 12 mm, serie Nº 44923.

One sawn-off shotgun "EIBAR", calibre 20, Spanish manufacture, series NO 1531.

One "Walther" pistol, calibre 7,65mm, series NO 484674, German manufacture, in a bad state of repair.

One revolver of the "Smith & Wesson" type, calibre 38 no visible series number, in a bad state of repair.

One revolver of the "Smith & Wesson" type, calibre 38, chromium plated with a bone butt, in a bad state of repair and no visible series number.

Seventy-three (73) rifle cartridges, calibre 12.

Two hundred and seventy (270) army cartridges, calibre 7 mm.

Furthermore Flores Baeza's criminal record reads as follows:

1956: Imprisoned for burglary

1964: Imprisoned for being accessory to a burglary and an order of seizure issued after his flight.

1965: Fraud

1966: Burglary

The Second Military Prosecutor's Office of Santiago is at present holding an inquiry into the case.

2.- Intimidation

In paragraph 50 of its Report the Working Group states that it has been informed by "reliable sources" that 110 cases of "intimidation" were recorded in Chile during the first 10 months of 1977; further on it mentions 7 cases which it describes as "significant" (see paragraph 60).

'How far have we come from the days when the Group itself asserted that the whole of Chile was living in an environment of "intimidation" '

But what is the basis for the Group to affirm the existence of "intimidation"?

First, in the "reliable source" that informs having registered 110 cases in 1977 but without offering any detail about them depriving consequently the Chilean Government of the possibility of checking the information. Then it describes seven

cases which are mentioned as "significant".

It is necessary then to analyze these "significant" cases to conclude if really they are the basis of the Group's assertion.

In paragraph 60 item d) the Report mentions a man whose house was searched and who as a result "is afraid" of being arrested. Then in item e) it mentions three people who "fear" they will be arrested because two persons with whom they had connections were supposedly arrested the previous day. Item f) adds that somebody "is afraid" she will be detained because the day before she was interrogated about a neighbour by persons who declined to identify themselves.

Item g) concerns another person who had previously been detained and then released was now "afraid" he would be arrested again.

Did the Group verify the facts about those cases? Did it have them checked for greater precision at the time, or did it even make enquiries about them from the Government of Chile? Did it find out whether those "fears" which the persons alleged they felt ever proved founded? Did it take the trouble to ascertain whether there were any grounds for those "fears" or whether they were merely "personal feelings"?

The Group never bothered to take any such steps.

Those proofs, as became clear, never "illustrated" anything except the careless way the Group goes about its work.

3.- The deprivation of nationality

In its observations to the Ad-hoc Working Group's Report delivered to the XXXII General Assembly's Meeting, the Chilean Government lengthfully explained this measure of deprivation of nationality stated by the Constitution and pointed out the importance of the motives which permitted its application making it clear that it only had been applied in ten opportunities.

The Working Group then declared on 29 September 1977 that appeals against loss of nationality were not operative in Chile.

This hazardous statement was nullified once and for all in December 1977 when the highest court in the country

gave a favourable verdict to señor Elgueta's appeal and ordered the cancellation of the measure pronounced against him. All this information was made available to the Ad-hoc Working Group by the Chilean Delegation in Geneva on 4 January 1978 together with a copy of the sentence and a copy of the Official Gazette ("Diario Oficial") in which the cancelation was published.

The disinclination of the Group to state the truth can again be clearly seen in the way it handled this subject.

In fact, far from admitting its mistake and reporting the fact which openly disproved its earlier statement, the Group again brought up Humberto Elgueta's name in the list of persons who had been deprived of their nationality. Only at the bottom of the page did it put a short footnote, which could easily pass unnoticed, saying succinctly: "The Group received information from the Government of Chile that in December 1977 the Supreme Court of Chile had ruled favourably on the appeal of Mr. Elgueta and declared without effect the decree which had deprived him of his nationality".

Would it not have been more honest and more logical to have removed señor Elgueta's name from the list if the Group was not willing to publish the information supplied by the Government of Chile which had received ample notice in the press?

On the other hand the Group points to a "recent increase in deprivation of nationality" which in view of the fact that there is only one case concerning señor Sergio Poblete, constitutes another misleading assertion.

But that is not all. The Group forgot to mention that the subject of this single new case had appealed to the Supreme Court and that, despite the example of the success of señor Elgueta's appeal, señor Poblete withdrew his own for reasons best known to himself.

4.- Expulsion and the right to return

The Working Group itself does point out that people outside the country may submit an application to go back, having to undertake to respect the constituted regime, the political recess and the legal provisions in force. But then the Group adopts the unheard of attitude of describing as "coercion" the requirement for such mentioned above.

In that connection the Ad-hoc Working Group brings up two cases: the first is that of señor Jaime Castillo and the second concerns señora Yolanda Bravo, señora Ana González and señora Ulda Ortíz, where it again indulges in the superficiality of giving a biased report of the facts.

The Castillo case: As reported in various Chilean newspapers and as the Group must be aware, señor Castillo has submitted a number of appeals to Chilean Courts of Justice urging that his return should not be subject to the prior submission of the forementioned application. Señor Castillo has submitted a number of appeals to Chilean Courts of Justice urging that his return should not be subject to the prior submission of the forementioned application. Señor Castillo lost each time, the last occasion being a hearing by the Supreme Court on 17 January 1978.

The Bravo, González and Ortíz case: Here again the Group's total lack of interest in finding out the facts is manifest.

In paragraph 100 of the Report the Working Group says "The refusal of the Government to permit the women to return to Chile has been widely criticized".

This again is false. On 30 December 1977, which means three weeks before the Group approved its report, doña Gabriela Bravo, doña Ana González and doña Ulda Ortíz handed in their application forms for re-entry to Chile at the Chilean Consulate in New York and signed them. They travelled to Santiago on 18 January 1978 by Braniff's 920 flight.

The above was widely reported in the media, including a story in "El Mercurio" of 19 January 1978.

The Carlos Contreras Labarca case:

The Group also has failed to report the return on 17 January 1978, of Mr. Carlos Contreras Labarca possibly because their "reliable sources" conveniently kept it quiet. Well known as the leader of the Chilean Communist party, Carlos Contreras Labarca returned with no obstacles whatsoever. His passport had been given him in Berlin on 5 October 1973 and was renewed at the Chilean Consulate in Berlin on 2 December 1977.

A lawyer, ex-deputy and Senator for his party, of which he was the Secretary General and leading figure for more than ten years, señor Carlos Contreras Labarca took an active part in the Allende election campaign, and during the latter's government was Chilean Ambassador in the German Democratic

Republic.

After the fall of the Allende Government, señor Carlos Contreras Labarca went on living in East Germany until he decided to return to his country at the beginning of this year.

5.- Independence of the Judiciary

The tradition of complete independence and integrity of the Chilean Courts of Justice has been upheld once again in cases where the line taken by the Government lawyers was rejected, despite the Group's efforts to contradict this and its vain efforts to damage their reputation.

The 12 leaders of the ex-Christian-Democrat party case: For violation of the political recess the penalty of banishment was applied to 12 members of the ex-Christian-Democrat party, who were sent to various localities in the Province of Arica.

Those concerned appealed to the Santiago Court of appeals. On 26 January 1978 the Court admitted their appeal and determined, in accordance with its interpretation of the law, that such banishment should apply to a specific Province (in this case Arica) and not to a particular locality or village of that Province.

The Court's findings were transmitted to the Ministry of the Interior which immediately complied, transferring those concerned to a location of their own choice, namely the city of Arica capital of the Province of that name.

Señor Humberto Elgueta's loss of nationality case:

As stated earlier, the Supreme Court decided in favour of the above's appeal and passed its findings on to the Executive for implementation. The latter forthwith issued a Decree cancelling the measure of deprivation of nationality.

6.- Missing persons.

A study of the list of 1015 persons alleged to have disappeared, given in Annex "LV" to the Report submitted by the Ad Hoc Working Group to the 32nd Session of the General Assembly of the United Nations last September, calls for the following Comments:

a) The list . . . includes the nominal roll of what is claimed to be a consolidated listing of the lists handed by the President of the International Committee of the Red Cross to the President of the Republic of Chile in December 1976 and threelists submitted by the Vicaría de la Solidaridad to the Supreme Court.

It should be noted that there is a fundamental difference between the action to be taken with regard to the lists which Mr. Hay, President of the International Committee of the Red Cross, personally brought to the attention of President Pinochet in December 1976 and the lists of the Vicaría de la Solidaridad, which were the Appeals for Protection submitted to the Supreme Court of Justice.

The nominal rolls from the International Red Cross handed to the Government of Chile gave rise to a minute investigation, which is carried out by the Administration, whereas the appeals for protection ("amparo") only result in a request from the Courts for information as to whether those persons are deprived of liberty or not. Once the information has been received and it is established that the persons are not detained, it merely remains to turn down the appeal for protection. If the appeal is taken up because the person has been arbitrarily detained, the Courts order his immediate release.

It must therefore be realized, as has been explained so many times to the Group, that the appeal for protection ("amparo") is not the adequate way to request an enquiry regarding an alleged disappearance but instead the report of the fact must be presented before the appropriate Criminal Court.

It is solely up to the Government of Chile to take action, as it has done and continues to do, for investigating the position of the 893 persons on the list handed in by the President of the International Committee of the Red Cross.

b) Just Reading through the so-called consolidated list is enough to reveal the following:

CASES	COMMENTS
14 and 31	Same identification card 58451 for two persons with different first names and family names (see pages 323 and 324)
16 and 17	Same surnames. First name doubtful. Same dossier except the last digit. Same date of detention.
30 and 31	Same surnames. First name starts with the same letter. Same age. Same date of detention.
33	Same person with two different identification cards for two different dates of detention.
57 and 58	Strange similarity of names. Very similar ages. Same date of detention.
60 and 61	Same surnames and date of detention. If one of the first names is reversed, both become almost identical. Ramón should have an identity card (48449) lower, because of his age (28), than Omar's (45716) who is only 21. It may be a case of adulterated names and identity cards.
130	Detained in February 1973.
165 and 173	First names and surnames coincide. For one of them no second name is shown. They are both on different lists. They may be the same person.
186 and 187	Similar first surnames and names. Second surnames are rare and somewhat similar. Both dates of detention would be the same if the first and third digits of one of them were transposed.
250	Same person with two different identity cards.
256 and 257	Same surnames. Same date of detention. In the absence of other identifying data it may be supposed that it is the same person whose composite name was subdivided.

- 259 and 260 Same features as the preceding case.
- 275 and 279 Identical surnames, names and ages. The same person appearing on two different lists.
- 300-301 and 307 All dates are very incomplete. One gives no date of detention. Surnames and names are curiously similar. May well be the same person detained several times.
- 309 and 310 Very similar surnames and names. Two different lists. Same date of detention.
- 325 Figures under list of 119 missing persons. But the date of detention repeated seems to be later than the case itself.
- 356 and 357 Same first surname and name- One has no second surname. Lack of other data. May be the same person detained on two occasions.
- 359 and 360 Surnames and names practically the same. One has no second surname and incomplete data. May be the same person.
- 412 and 413 Same surnames. First letter of names similar. Same age. Same date of detention. Both have no identity card. May be the same person appearing on two different lists.
- 466 and 447 Same surnames. Same date of detention. No other identifying data. May be the same person referred to by different names, or a typing error.
- 461-462 and 463 Same surnames. Curious similarity of names and dates of detention. May be the same persons, or at least only two instead of three.
- 474 and 475 Same surnames, different names. Same date of detention. Save for the final digit, the identity cards are almost the same issued by two different offices. May be the same person with adulterated documents and names.
- 476 and 477 Same surnames and first name. Same age. Same date of detention. Two different lists. One has no identity card. May be the same person.

- 565 Same person with two different identity cards.
- 610 and 613 Same surnames. Same second name. First name easy to confuse when transcribed. Same date of detention.
- 644-645
and 646 One shows no date of detention the other two show the same date. Curious indication of the second names. Two of them with same name. May be the same person as the date is very incomplete and an identity card is only indicated for one of them.
- 719-720
and 721 Same surnames, different names. Same date of detention. Different lists. Curiously not one of them has other data shown. May be the same person.
- 752 and 753 Same first surname, different second surname. First and second names identical. Same date of detention. No other identifying details. May be the same person.
- 765 Same person with two different identity cards.
- 780 and 781 Same surnames. Same date of detention. No other identifying data. May be the same person with names subdivided.
- 789 and 790 Same surnames. Different names. Same identity card. One has two different identity cards. Dates of detention very close. May be the same person with names and identity cards adulterated.
- 796 and 797 Same surnames. Same date of detention. No other data. May be the same person with names subdivided.
- 821 and 822 Same first surname. Second surname, names and dates of detention totally different. But the same identity card. May be the same person with names adulterated or badly recorded.
- 833 and 834 Same surnames and name. No other identity data. May be same person detained twice.
- 842 and 847 Totally different surnames, names and dates of detention. But the same age and identity card. May be the same person with adulterated documents or registries.

- 864 and 865 Same surnames. Different names. Same date of detention. No identity card data. May be the same person with subdivided names.
- 898 and 899 Same first surname. Second surname and names different. Same identity card. One has two cards. May be the same person with adulterated documents or badly registered.
- 975 and 976 Same first surname. Curious similarity of second surnames. At least one name the same. Same date of detention. No other identifying data. May be the same person badly registered.
- 992 and 993 Same surnames. One name the same. No identity cards. May be the same person detained on two occasions.

c) The lists still show as missing some persons whose identity, location and, in many cases, personal statements give the lie to their disappearance. The Working Group is aware of this information.

All the foregoing has led the Government of Chile to seek the collaboration of International Organizations of humanitarian character whose soundness and prestige are widely recognized.

Thus the Government of Chile is cooperating with the International Committee of the Red Cross, to which it has periodically transmitted the results it obtains from its investigations. Those reports are contained in official communications of the Government of Chile to the International Red Cross dated a) 22 February 1977; b) 10 May 1977; c) 11 May 1977; d) 10 June 1977; e) 26 August 1977; f) 26 August 1977; g) 24 October 1977; h) 17 November 1977; i) 11 January 1978; j) 13 January 1978; k) 16 February 1978; and l) 16 February 1978. (1).

In view of what has been stated above, the Government of Chile rejects categorically the assertion that the Chilean authorities "have declined even to undertake an adequate investigation" with regard to disappearances, and states that, with the aid of the International Committee of the

(1) See Annex NO 6. List of replies given by Government of Chile to ICRC.

Red Cross it Will pursue further the delicate and serious work which the investigation of alleged disappearances entails, and that it will be to that body, as to others of repute and indisputable reliability that it will continue to transmit its reports, while at the same time asking for their assistance without any political considerations but openly aimed at finding an adequate reply to the problem laid at its door.

S E C O N D P A R T

RULES AND PROCEDURE FOR AN INVESTIGATION ON
HUMAN RIGHTS AND THEIR VIOLATION IN THE CASE
OF CHILE

1.- The Back ground de Facto and de Jure

Ever since 11 september 1973, the day when a military uprising put an end to the chaotic situation developing in Chile with complete breakdown of legality, as pronounced by the Supreme Court, the National Congress, the Office of the Controller General of the Republic and countless other institutions, a campaign against Chile came into being at world level, charging it with wholesale systematic violations of human rights and other cruel, inhuman and degrading acts. That campaign took place at the United Nations, while some of its Agencies simultaneously set about initiating a variety of accusatory procedures of singular virulence.

At its XXIX Session the United Nations General Assembly agreed to charge the Commission on Human Rights with making a study of the charges levelled against Chile of alleged violations of Human Rights. Meeting in Geneva in February 1975, the Commission agreed to set up an Ad-hoc Working Group to enquire into "the présent situation of Human Rights in Chile", giving it one year to fulfill its task, namely to report on the existing situation in the field of Human Rights, so as to enable the Commission to evaluate the soundness of said Report.

Various situations and events, which will be set out later, led to the Ad-hoc Group submitting a series of Reports, the last of which is to be discussed under item 5 of the current Agenda. Said Reports have already served as a basis for a number of declarations by Organizations of the United Nations system, including of course the Commission on Human Rights itself.

Up till now Chile has endeavoured to assist the enquiries to the best of its ability, showing an exemplary attitude, which has certainly not been a feature shared by the Member States in matters concerning Human Rights.

The last Resolution of the General Assembly of the United Nations, based on the Report concerned of the Ad-hoc

Working Group, caused the Chilean Government and nation (whose feelings were made clear in a National Consultation in which over 50% of the total population of the country and almost 100% of all adults took part) to request the Commission on Human Rights to review the activities of the Working Group in order that it should work in accordance with the principles and resolutions of the United Nations on the subject, and should cease the partial, discriminating and irritating attitude displayed towards Chile.

a) Within hours of the change of Government in September 1973 the General Assembly of the United Nations received denunciations against the new Government of Chile from the Cuban and Soviet Delegations, and telegrams were despatched to the Government of Chile. It turned out that all those denunciations were absolutely false, and all the persons whose sudden death had been reported are fortunately still in excellent health.

b) The next United Nations body to take up the situation in Chile was UNESCO, the 93rd session of which happened to be meeting in October 1973; once again it was Cuba, through the intermediary of the Cuban National Commission to UNESCO, which proffered insulting and alarming charges against Chile, which at that moment was facing the difficult problem of countering the action of over 10.000 Cubans and some thousands of extremists of other nationalities, all organized in para-military formation and seeking to subject Chile by means of terror to a Soviet-inspired dictatorship.

An unwarranted and passionate debate based on a biased and insulting document took place, and the Executive Council adopted Resolution 93 EX/8.3, establishing without obtaining the agreement of Chile or even consulting it, an Ad-hoc procedure valid only for Chile whereby UNESCO, "referring to Chile and only to Chile", took cognisance of all kinds of denunciations concerning Human Rights, even though the latter were in no way connected with UNESCO's spheres of competence which are specifically Education, Science, Culture and Communications.

It appears beyond any doubt that many of the distinguished members of the Executive Council took no heed of the gravity, injustice and discrimination implied in the motion adopted, being carried away by the impetus of the international campaign referred to above. This was shown by the

attitude adopted later by UNESCO, when first the Chilean member on the Executive Council and afterwards the Chilean Delegation to UNESCO protested against the procedure followed, the ultimate result of which was that any protests concerning alleged violations of Human Rights "in Chile or anywhere else in the world" were most seriously, carefully and universally studied, until finally Document 102 EX/19 was drawn up covering the "Study of suitable procedure for examining cases and subjects which might be submitted to UNESCO with regard to the exercise of Human Rights within the scope of its powers, with a view to making its action more effective". An honour to the United Nations System, that study demonstrates how it is possible to advance towards an effective and objective safeguard for Human Rights in the world, guarding against such an important notion losing its value by being used to prosecute specific countries or régimes for purely political reasons or to maintain certain subjects permanently deadlocked with a view to avoiding a universal and in-depth study of the Rights of every man on the face of the earth.

c) The first question to be submitted to the Commission on Human Rights concerning Human Rights in Chile is set forth in the records of the 1279th session of 1 March 1974, when the Chairman was authorized to send a telegram to the Government of Chile urging it "to cease forthwith all manner of violation of Human Rights committed in violation of the Principles of the Charter of the United Nations and other international instruments including the International Pacts on Human Rights". The Commission proclaimed its special concern for the following political figures and professors Messrs. Clodomiro Almeyda, Luis Corvalán, Enrique Kilberg, Pedro Felipe Ramirez and Anselmo Sule.

d) On 17 May 1974, at its 1899th session, ECOSOC adopted Resolution 1873 (LVI) referring to the Protection of Human Rights in Chile, which notes the concern of the Commission on Human Rights at its XXX Session as expressed in the forementioned telegram, the reply of the Minister for Foreign Affairs of Chile. The ECOSOC Resolution takes upon itself the Commission's concern and in turn urges "the Government of Chile to take all necessary measures with a view to re-establishing and safeguarding basic Human Rights, &c."

e) The Subcommittee for the Prevention of Discrimination and the Protection of Minorities, at its 711th session on 21 August 1974 adopted Resolution 8 (XVII) entitled "Question of the respect for the Human Rights of persons subjected to any form of detention". After taking note of General Assembly Resolution 3059 (XXVIII) concerning tortu-

re and other cruel, inhuman or degrading treatment or sentences still being applied, Resolution 8 (XVII) draws attention to the profound concern expressed by the Commission on Human Rights "for the numerous and wholesale violations of Human Rights in Chile" : it refers to ECOSOC Resolution 1873, makes an urgent appeal to the Government of Chile to respect the Universal Declaration of the Rights of Man and comply with the International Pacts "signed and ratified by the Government of Chile", recommends that the Commission on Human Rights during its XXXI Session study the denunciations regarding violations of Human Rights in Chile, and "requests the interested Specialized Agencies, Intergovernmental and Non-Governmental organizations in consultative status to submit to the Secretary General for transmission to the Commission on Human Rights any recent and reliable reports on cases of torture and other cruel, inhuman or degrading treatment or sentences in Chile". Finally, it requests the Secretary General to bring the terms of the recently adopted Resolution "to the attention of the Chilean Government".

f) At its XXIX Session the General Assembly adopted Resolution 3219 during its plenary meeting Nº 2278 on 6 November 1974, reiterated its concern and referred the matter to the Commission on Human Rights.

g) At its XXXI Session held in Geneva from 3 February to 7 March 1975 the Commission on Human Rights adopted on 27 February at its 1323rd meeting Resolution 8 (XXXI) concerning the Study of reports on violations of Human Rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment".

In the latter Resolution, the Commission on Human Rights, bearing in mind the Charter of the United Nations and recalling all the forementioned resolutions as well as Resolution 18a of the UNESCO General Conference, "takes note with profound concern of the continuing reports of violations of Human Rights in Chile and likewise of the declarations with regard to item 7 of the Programme of the XXI session of the Commission on Human Rights" and further:

"1.- Decides that an Ad-hoc Working Group, composed of 5 members of the Commission to be appointed personally by the Chairman of the Commission on Human Rights and act under his authority, shall investigate the present situation of Human Rights in Chile on the basis of the forementioned Resolutions, paying a visit to Chile and assembling oral and written proofs from all appropriate sources";

"2.- Urges the Government of Chile to extend its full

cooperation to the Ad-hoc Working Group in the fulfillment of its task, and, for that purpose, to extend to it all necessary facilities and complete freedom of movement within the country; "

"3.- Charges the Ad-hoc Working Group to report the results of its enquiries to the XXXII Session of the Commission on Human Rights, submitting a preliminary report on its finding to the Secretary General for inclusion in the Report to be submitted to the XXX Session of the General Assembly, in accordance with the term of General Assembly Resolution 3219 (XXIX), after which the Ad-hoc Working Group would cease to exist; "

"4.- Requests the Secretary General to extend all support to the Ad-hoc Working Group which it may require for the fulfillment of its task; "

"5.- Recommends that ECOSOC take the necessary steps to provide financial resources and adequate personnel for the implementation of the present Resolution; "

"6.- Decides to give high priority to the study of the question of violations of Human Rights in Chile at its XXXII Session."

h) The relations between the Working Group and the Government of Chile are examined in the First Chapter of the first part of these Comments. The requests of the Government of Chile contained in the documents of 21 May 1975 and 2 June 1975 are still awaiting reply.

These communications refer essentially to minimum conditions for asking the cooperations of the Government of Chile possible.

i) Statements made by the Chairman of the Working Group, publications in the Chilean press of reports of testimonial proof given in Paris and New York before dealing with pending items, publicity regarding the projected visit - all these led to various internal circumstances connected with security and to an indignant reaction of Chilean public opinion. This caused the Government of Chile to postpone the visit of the Working Group and to invite its Chairman to discuss with the President of the Republic the problems which were affecting the normal relations then prevailing between the Group and the Government.

The Chairman of the Working Group declined the invitation proffered by the President of the Republic.

j) The situation and the discussion have remained unsolved. Furthermore, far from seeking a solution to this prior question, the Group went ahead with its work, accepting testimony and all manner of accusatory information or proof, and drafting a series of reports without any participation of the Government of Chile or its acceptance of the procedure followed.

k) At all times anxious to show its exemplary attitude towards applicable legal and institutional norms, Chile stopped at no effort to provide the Group with elements of judgement, making such documents and reports as it possessed available to them directly or through its representatives, while still maintaining unchanged its well-founded insistence that the procedure of the Ad-hoc Group should meet with its approval in order to conform to the standards of equal sovereignty of States, and therefore of universality in the treatment to which they are entitled.

However, that stand of the Government of Chile failed to be understood. The assistance given the Ad-hoc Group was taken as signifying recognition and acceptance of its competence and of the validity of its procedure, while Chile's reluctance to accept an investigation in situ was merely regarded as a failure to comply with the Commission's Resolution 8 (XXXI). Nothing could be further from the truth, as we shall demonstrate. Chile saw fit to make such elements of judgement as it could, available to the Ad-hoc Working Group while still insistently reminding it of the need to observe, in accordance with law, the undeniable right of a sovereign State to respect for what are also its sovereign powers. Carrying out the investigation in situ without prior establishment, agreed to by Chile, of the appropriate procedural norms, signified the unacceptable juridical aberration of permitting an investigating Group to carry out enquiries and other functions proper to the objectives for which it was created inside a sovereign country, without agreement on the subject from the State involved for the accomplishment of its task as is required in the basic Principles of the United Nations, especially those referring to equal sovereignty and non-intervention. This is emphatically and clearly confirmed in ECOSOC Resolution 1503, where its Article No 6 item b) calls for the Special Committee to work in constant collaboration with the State involved and in accordance with the conditions established by it".

As already stated, the Government of Chile has come

to the conclusion that it would be betraying its duty to the common good of the country, to the express wishes of the great majority of its people, to the dignity of the nation and the very cause of Human Rights if it were to agree to keeping on the kind of relationship with this Ad-hoc Group, in as much as the latter has not deigned to admit the essential condition of the agreement of the State for establishing norms for the activities of said Group, as is required in much quoted Resolution 1503. Even worse, the very existence of that Resolution as a basic standard applicable to such matters has also not been recognized.

The time has therefore come to set matters in strict legal order, according to standards of due process for making it possible for Chile to cooperate with all organs of the United Nations, as is its traditional attitude.

II.- Study of the action taken against Chile in the light of Principles and standards prevailing within the United Nations system.

Procedure for studying communications concerning violations of Human Rights and fundamental freedoms:

This subject has been extensively considered in Document 102 EX/19, drafted by the UNESCO Division of Human Rights pursuant to the recommendation of the 19th meeting of the General Conference charging the Executive Council with "studying the appropriate procedure to be followed for studying cases and subjects which may be submitted to UNESCO concerning the exercise of Human Rights within the scope of its powers with a view to making its action more effective".

Paragraph 54 of that Document recalls the origins of ECOSOC Resolution 1503 concerning a thorough study of procedures in force at the United Nations on the subject, saying "Pursuant to General Assembly Resolution 2144 (XXXI), calls on the Commission on Human Rights to make an urgent study of ways of reinforcing the means at the disposal of the United Nations for the Commission with the Subcommittee for the Prevention of Discrimination and the Protection of Minorities to study the data concerning flagrant violations of Human Rights contained in the communications mentioned in the list drawn up to implement Resolution 728F (XVIII) in its Resolution 9 (XXIII); the Commission asked that its mandate include the right to recommend and adopt general and special measures with a view to dealing with violations of Human Rights. In its Resolution 1235 (XLIII) of 6 June 1967 the Council authorized the Commission and the Subcommittee to study the pertinent information, and decided that the Commission, after lengthy examination, could make a thorough study of situations which reveal a picture of persistent violations of Human Rights. Based on the proposals of the Commission and the Subcommittee, on 27 May 1970 the Council adopted Resolution 1503 (XLVIII) with regard to "Procedure for studying communications concerning violations of Human Rights and Fundamental Freedoms".

Paragraph 55 reads "Resolution 1503 authorizes the Subcommittee as a first step to appoint a Working Group composed of not more than 5 of its members which would meet once a year in private session immediately before the sessions of the Subcommittee to study all communications, including replies from Governments to same, received by the Secretary General in accordance with Resolution 728F (XVIII)

in order to ascertain by majority vote which communications appear to reveal a picture of persistent manifest and reliably authenticated violations of Human Rights and fundamental liberties, to which replies from Governments shall be attached where appropriate. But before coming to the thorough study in depth, the Working Group of the Subcommission must examine the admissibility of the communications received, in compliance with Resolutions 728F and 1235, ascertaining whether the conditions of admissibility laid down in Resolution I (XIV) have been fulfilled.

"Further, said Subcommission must examine in private session the communications submitted to it and all the replies from Governments on the subject, in order to ascertain whether it is desirable to submit certain situations to the Commission on Human Rights which appear to reveal a picture of persistent manifest and reliably authenticated violations on Human Rights. As such, the communication comes to be regarded as constituting a mere element of information concerning a situation connected with Human Rights. Finally the Commission on Human Rights is asked to determine whether a situation which has been reported does require thorough study in depth and drafting a report, or whether it requires that a Special Committee be set up to investigate the matter; this would only occur if the State concerned gives its express agreement and is carried out in constant cooperation with said State and in accordance with conditions established by mutual agreement with that State". The Committee will seek to reach friendly solutions before, during and even after the enquiry. It will include in its Report such comments and suggestions as it considers pertinent. Until such time as the measures envisaged by the Commission and its Subcommission in compliance with Resolution 1503 shall be of confidential nature. All the procedure laid down in this Resolution shall be reviewed if a new body comes to be created within the United Nations with powers to examine said communications or if this is done by international agreement. Reference is made to the Committee on Human Rights of the International Pact on Civil and Political Rights, which will start operating in 1977. The procedure set out above became effective in 1971, and in 1972 the Subcommission Working Group submitted its first Report, containing a few situations which appeared to reveal a series of flagrant and systematic violations of Human Rights. In 1973 the Subcommission reported various situations to the Commission, following up with others in 1974. The Commission held a number of discussions concerning its function, its methods of work and the action it could take to implement the procedure laid down in Resolution 1503. But it has not yet decided, with regard to

one or several of the situations reported to it, whether it should set up a study and a detailed enquiry because so far not one of the situations has been reported to the Economic and Social Council, so all the documents concerning the implementation of this procedure are still confidential".

From the quotation above, which we preferred to quote in full so as to give a sound and unbiased picture, the following unarguable conclusions emerge:

1.- There does exist a precise and clear procedure for examining communications concerning violations of Human Rights and fundamental liberties. That procedure is the one laid down in ECOSOC Resolution 1503 and is the only one currently valid in the Commission on Human Rights, the Subcommittee for the Prevention of Discrimination and the Protection of Minorities, in the Working Group appointed by the Subcommittee itself for the preliminary examination of the communications and the replies from Governments, and in the Special Committees or Ad-hoc Groups like the one established by Resolution 8 (XXXI).

2.- The only cases of exceptions where this procedure is not valid are: 1) if it is decided to modify or alter its implementation by reason of the Committee on Human Rights of the International Pact on Civil and Political Rights having started to operate, in which case a new system of standard would have to be defined in concrete terms; and 2) if an international agreement so demands.

3.- That procedure envisages the following steps in the procedure for examining communications concerning Human Rights and fundamental freedoms, which appear clearly logical and effective:

a) Prior examination by a Working Group appointed by the Subcommittee and composed of not more than 5 of its members, wherein "geographic distribution" must be taken into account. Said Working Group shall meet once a year, in private session, for a period not exceeding 10 days, immediately before the sessions of the Subcommittee. Their prior examination of the communications, be they denunciations or replies to the latter, must call the attention of the Subcommittee to such of them as "appear to reveal a picture of persistent manifest and reliably authenticated violations of Human Rights and Fundamental Freedoms within the competence of the Subcommittee (Resolu-

tion 1503 NO 1).

b) The Subcommittee must examine in private session the communications and replies submitted to it through the Working Group. Said Subcommittee must determine whether it is desirable to submit to the Commission on Human Rights specific situations which appear to reveal a picture of persistent manifest and reliably authenticated violations of Human Rights. (Resolution 1503 NO 5). Said Subcommittee was further charged by ECOSOC with the preparation of a procedure dealing with the question of admissibility of the communications received by the Secretary General of the United Nations by virtue of Resolutions 728F (XVIII) and 1235 (XLII), for which the latter was requested to prepare the appropriate document.

c) The Commission on Human Rights must study the subjects "submitted to it by the Subcommittee and must determine whether said questions merit a thorough study in depth by said Commission and a consequent Report to the Economic and Social Council in accordance with paragraph 3 of Resolution 1235, or whether it is desirable that they be the object of the enquiry by a "Special Committee to be appointed by the Commission", whose work "will only be carried out if the State concerned gives its express agreement and in constant cooperation with said State and in accordance with conditions established by mutual agreement with that state". In any event, the enquiry can only be initiated: 1) if every available resource within the national framework has been employed and exhausted; and 2) if said situation is unconnected with any question currently under study in accordance with other procedures laid down in the constitutive instruments of the United Nations and its Specialized Agencies under conventions approved by them, regional conventions, or if the State concerned does not prefer to resort to other procedures in accordance with international agreements, general or special, to which it may adhere (R. 1503 NO 6).

d) In the supposed case where it is agreed that the Commission shall set up a "Special Committee or "Ad-hoc Working Group", as stated in Resolution 8 (XXXI) referring to Chile, that same Resolution 1503 specifies: a) that the composition of the Committee to be determined by the Commission on the basis of members who should be independent figures offering full guarantee of competence and impartiality, and not on the basis of geographic distribution nor membership of the Commission on Human Rights, shall be subject to the agreement of the Government concerned; b) the Committee shall establish its own By-laws,

but the enquiry shall be conducted in cooperation with the Government concerned and in accordance with the conditions previously established with the latter, as stated above; c) the proceedings of the Committee shall be confidential, its discussions held in private sessions and the communications shall not be the subject of any publicity; d) Amicable solutions shall be sought before, during and after the enquiry; and e) a Report shall be supplied to the Commission on Human Rights together with such comments and suggestions as are deemed pertinent:

e) ECOSOC Resolution 1503 in Article Nº 8 specifies that "All measures envisaged by the Subcommission or by the Commission to implement the present Resolution shall be of confidential nature until the Commission decides to submit recommendations to ECOSOC. It further specifies in Article Nº 10 that that procedure "must be reviewed if a new body is set up with powers to examine said communications within the Commission on Human Rights or by international agreement.

f) This procedure is consequently fully valid, and obligatory and applicable in its entirety in the case of Chile ever since Resolution 1503 adopted by ECOSOC on 27 May 1970 came into force.

To illustrate this, it is sufficient to recall that at the XXXII Session of the United Nations General Assembly in December 1977 the Permanent Mission of Belgium submitted a motion calling upon "all States, with a view to reinforcing the safeguards for Human Rights, to renounce voluntarily the rights conferred on them by ECOSOC Resolution 1503 (XLVIII) under item b) of Article Nº 6, meaning that they would not require the prior consent of the State concerned before initiating an enquiry". That motion was not accepted due to the reluctance of States to give up their powers, so that Resolution 1503 remains in force in its original form.

A study should be made at this point of the extent to which that Resolution has been complied with or infringed in the case of Chile.

III.- A study of the procedure adopted towards Chile by the Commission on Human Rights, the Subcommittee for the Prevention of Discrimination and the Protection of Minorities and the Ad Hoc Working Group.

The Commission on Human Rights took up the subject of the situation of Human Rights in Chile for the first time at its 1279th session on 1 March 1974. It then authorized its Chairman to send a telegram to the officials of the Government of Chile urging them to "put an immediate end to all forms of violation of Human Rights committed in violation of the Principles of the Charter of the United Nations and other international instruments, proclaiming its particular concern for the political figures and professors Messrs. Clodomiro Almeyda, Luis Corvalán, Enrique Kirberg, Pedro Felipe Ramírez and Anselmo Sule".

COMMENTS :

a) In the first place it is noteworthy that the Commission on Human Rights accepted as authentic the presumed violations of Human Rights alleged to be committed in Chile without prior investigation or enquiry and confirmation; thus the significance of the words "put an immediate end to the violations of Human Rights, &c.", meaning in effect that what is actually happening must be stopped, taking it as confirmed; that is to say that it was making an obvious prejudgement;

b) There is no mention of following the procedure in force covering such cases, namely ECOSOC Resolution 1503;

c) It is worth bearing in mind as an illustrating fact that all the political leaders mentioned in the Resolution are at liberty.

The foregoing are the "de facto and de jure bases of that Resolution.

1.- The foregoing was immediately followed by ECOSOC Resolution 1873 (LVI) of 17 May 1974, which takes note of the concern of the Commission on Human Rights, adopts it as its own, and in turn urges "the Government of Chile to take all necessary steps to restore and safeguard basic Human Rights, &c., &c.....".

COMMENTS :

a) Once again the facts are taken as authentic with no enquiry being made, which accounts for the significance of the word "restore"; one re-establishes what is being violated, in this case Human Rights;

b) The prejudgement is thus upheld, with no attention paid to the reply from the Government of Chile;

c) But a very precise distinction is noticeable, in that reference is only made to basic Human Rights and fundamental freedoms.

2.- We now come to Resolution 8 (XVII) of 21 August 1974, adopted by the Subcommission for the Prevention of Discrimination and the Protection of Minorities under the title of "Question of the Respect of the Human Rights of persons subjected to any form of detention". This takes note of the grave concern of the General Assembly as expressed in Resolution 3059 (XXVIII) that torture and other cruel, inhuman or degrading treatment and sentences were still being applied, and, referring to Chile, adds various novel factors which are examined below:

COMMENTS :

a) In the first place it draws attention to the grave concern proclaimed by the Commission on Human Rights with regard to the numerous and wholesale violations of Human Rights in Chile, especially those supposedly involving threats to human life and freedom. It is noteworthy that the concept of unspecified violations mentioned in the earlier Resolutions has now advanced to becoming the "numerous" and "wholesale" violations serving to stress the scope of the Resolution, and all this still without the initiation of any procedure of investigation. The prejudgement is thus gaining strength.

b) An urgent appeal is addressed to the "Government of Chile to respect the Universal Declaration of the Rights of Man and comply with the terms of the International Pacts "signed and ratified by the Government of Chile" but which, it should be added, were not yet in force at that time. The

prejudgement factor appears once again, since it starts from the premise that the Government of Chile is not complying with nor respecting the forementioned Declartions and Pacts and that, we repeat, without any procedure of investigation yet having been established.

c) And now to the most extraordinary: the Subcommission "requests the interested Governmental and Non-Governmental Organizations in consultative status to submit to the Secretary General for transmission to the Commission on Human Rights any recent and authentic information on cases of torture and other cruel sentences and inhuman and degrading treatment occurring in Chile". That means that without any procedure to judge the soundness of its action, the Subcommission issues an appeal to the world for a campaign to be set in motion on a massive scale against one Member State which has so far been given no way or opportunity to defend itself.

d) And the one thing the Subcommission does not do is precisely to implement its own procedure which covers those points as laid down in ECOSOC Resolution 1503.

3.- By Resolution 3219 of 6 November 1974, the General Assembly takes note of the resolutions referred to, expresses its most profound concern at the fact that it is continuing to receive reports of continuous open violations of Basic Human Rights and Fundamental Freedoms in Chile, supports the recommendation of the Subcommission for the Prevention of Discrimination and the Protection of Minorities mentioned in the preceding Article, with a view to the Commission on Human Rights studying the denunciations concerning violations of Human Rights in Chile at its XXXI session, and requests the President and Secretary General to assist in every way they consider appropriate to restore such Rights in Chile.

COMMENTS :

a) An obvious contradiction merges from the text of that Resolution, which was brought to the attention of the General Assembly itself. Indeed Article Nº 1 expresses the most profound concern at the fact that it is continuing to receive reports of continuous and open violations of basic Human Rights and fundamental freedoms in Chile, while in Articles Nº 3 it urges the Chilean Authorities to restore

those Rights. That is as good as saying that the mere report mentioned in Article Nº 1 has become a certain fact in Article Nº 3.

b) The General Assembly remained oblivious to the fact that the Subcommission completely failed to implement the only procedure in force and fully valid for the case, ECOSOC Resolution 1503.

c) Once again the prejudgement factor is confirmed.

d) In 1975 the Commission on Human Rights accepted Resolution 8 (XXXI) entitled "Study of Reports of violation of Human Rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment".

A study of that Resolution and the way in which it has been implemented is fundamental since it set up the ad hoc Group which drafts the Reports about Chile.

COMMENTS :

A) Examination of Chapter II of that part of the procedure laid down in ECOSOC Resolution 1503 and its immediate predecessors, which are General Assembly Resolution 2144 (XXI), Resolution 8 (XXIII) of the Commission on Human Rights, ECOSOC Resolution 728F (XXVIII), Resolution 9 (XXIII) of the Commission on Human Rights and ECOSOC Resolution 1235 (XLII), reveals that one of its main features is the pronouncement of the Principle of Universality with reference to alleged violations of Human Rights.

In effect, the above-mentioned Resolution 2144 already talks of violations of Human Rights "wherever these may occur", which is reiterated in Resolutions 728F and 1235, where the policy of apartheid is cited as an example of violations (that is the meaning of the words "which illustrate" used in its text) and which was ratified in that same Resolution 1503 in its title "Procedure for examining communications concerning violations of Human Rights and Fundamental Freedoms".

The Principle of Universality, a direct outcome of the Principle of Equal Sovereignty of Member States of the United Nations Organization, is one of the principle foundations of the Charter and therefore applies to the United Nations and all its organs and agencies, which is why it is incorporated in their statutes, among them being the International Labour Office and UNESCO, which has specific competence in the field of Human Rights.

To return to Resolution 8 (XXXI) of the Commission on Human Rights, we see that Article NO 1 notes that it "Decides that an ad hoc Working Group composed of 5 members of the Commission to be appointed personally by the President of the Commission on Human Rights to act under his authority, shall investigate the present position of Human Rights in Chile, on the basis of the forementioned Resolutions, paying a visit to Chile and assembling oral and written proofs from all pertinent sources".

Although there is absolute consensus within the family of the United Nations that the problem of violations of Human Rights is world-wide and in one way or another concerns every Member State, today there exists an ad hoc Working Group only in connection with one of them, Chile. That is equivalent to hallowing the opposite of the Principle of Universality: Discrimination.

This is the first patent infringement of the Charter.

B) Passing specifically to the form in which the procedure of NO 8 (XXXI) has been applied, it is noticeable that the Working Group has not been guided by any procedure, has not obtained the agreement of the Government of Chile on the conditions of the enquiry as required by Resolution 1503, all of which constitutes an anomaly for which no explanation or justification can be found.

C) In studying the communications it receives and the witness's statements to which it listens, the Working Group should logically apply the criteria laid down in Resolution 1503 which has not been abolished. With that in mind it is of interest to examine Document 102 EX/19 of the Division of Human Rights of UNESCO: "But before coming to thorough study in depth, the Subcommission's Working Group must examine the admissibility of the communications received in compliance with Resolutions 728F and 1235, confirming whether the conditions of admissibility defined in Resolution I (XXIV) have been fulfilled".

The foregoing brings us to a point of fundamental importance with regard to procedure for denunciations of alleged violations of Human Rights : The admissibility of the communications or denunciations.

The admissibility of the communications is fundamental, for it is directly connected with the competence of the investigating body and with the correct implementation of the whole procedure. As far as Resolution 1503 is concerned,

it is a basic requirement for determining what is called the "picture of persistent manifest and reliably authenticated violations of Human Rights and fundamental freedoms within the framework of the attributes of the Subcommission for the Prevention of Discrimination and the Protection of Minorities", set forth in the Resolution.

Furthermore, that requirement complies with the duty of discarding unfounded communications, constituting the first opportunity which the State concerned has of defending itself.

This prior study of admissibility allows States to put on record only communications and denunciations based on plausible grounds and coming within the framework of the competence of the Body concerned.

Document 102 EX/19 of the UNESCO Division of Human Rights shows that within the United Nations System there exist 8 basic requirements referring to the admissibility of communications. Resolution I (XXIV) mentioned above refers precisely to them.

- 1.- The denunciation or communication must be in writing;
- 2.- Save in exceptional cases the denunciation or communication may not be anonymous. It must be assigned by its author and/or representative and must in addition be witnessed. As a general rule the name of the author must be communicated to the State concerned. (Both requirements are expressly set out in said Resolution I (XXIV) in Article 2 of the Optional Protocol of the Pact on Civil and Political Rights, in Article No 5 of Resolution 77 EX/78 of the UNESCO Executive Council, Article 21 of the European Convention on Human Rights and in Article 38 of the Interamerican Human Rights Commission Regulations.
- 3.- The author of the denunciation or communication must have an interest in taking action. The foregoing means that he/she must be the assumed victim of the alleged violation and must mention in clear and rigorous terms which presumed rights have been violated (Principle envisaged in the provisions mentioned).
- 4.- The denunciation or communication must come within the scope of the competence of the Body to which it is submitted.

That means that the denunciation or communication must not lie outside the Statutes of the competent Body which establish the procedure for studying them. In other words the communications must correspond to the rules covering the competencia racione materia, racione personae and racione loci applicable to the body charged with studying them. That principle, known as "seat of competence", besides being laid down in the provisions already mentioned, is expressly spelled out in Article NO 6, item b paragraph ii of Resolution 1503: If the situation is not connected with another currently under study in connection with other procedures laid down in the constitutive instruments of the United Nations and its Specialized Agencies in conventions approved by them, regional conventions, &C.."

5.- The denunciation or communication may not be offensive towards the State nor constitute an abuse of the right to denounce.

This requirement is based on the fact that, since the Member States are a part, and to a certain extent owners, of the International Body in question, it is illogical to take into consideration communications that offend their dignity and sovereignty.

This is expressly covered in Resolution I (XXIV) of the Subcommission for the Prevention of Discrimination and the Protection of Minorities, in Article 27 paragraph 2 of the European Convention on Human Rights, the Regulation of the Interamerican Commission on Human Rights (Article 39), Resolution EX 9.3 of the UNESCO Executive Council and in various other similar provisions.

Those same provisions specify that a communication or denunciation is offensive when : a) it is manifestly motivated by political considerations, especially if its objective runs counter to the provisions of the Fundamental Charter of the United Nations, in which case it must immediately be declared inadmissible. This is expressly stated in Article 3 paragraph c) of Resolution I (XXIV) of the Subcommission for the Prevention of Discrimination and the Protection of Minorities, quoted in Resolution 1503, thus forming part thereof; and b) its wording is of offensive nature; and c) bad faith is manifest.

6.- The denunciation or communication may not be identical with any other communication already examined or in process of being examined by any other body of the United Nations System.

This principle is already embodied in the provisions cited and is aimed at avoiding repetition of denunciations or communications sent to a same body within the System, thereby becoming liable to be declared inadmissible, as they presuppose a repetition of the same subject already considered.

The problem of repetition also arises when a denunciation or communication is submitted to two or more international bodies at the same time.

Here again the aim of this Principle is to embody the seat of competence, a basic rule for due process.

In International work this means that if a body within the System of the United Nations, having generic or specific competence in the field of Human Rights or even a recognized regional organization like the Organization of America States for example, starts considering a specific charge, then the other organizations must abstain from so doing since the seat of competence lies with the first.

7.- The communication or denunciation must be handed in within a reasonable time lag.

This principle calls for the denunciations or communications to be handed in within a reasonable time lag, either immediately after the occurrence or once the facts have been adequately verified. How long is a reasonable time lag ? :

a) According to Article 26 of the European Convention on Human Rights this reasonable length of time is 6 months after internal methods of resources have been exhausted;

b) According to the Regulation of the Interamerican Commission on Human Rights the reasonable time length depends on circumstances; and

c) According to ECOSOC Resolution 1503 (item 6, sub-item b paragraph i): "If all available recourses within the country have been used and exhausted".

8.- Prior exhaustion of internal means of recourse.

The basic purpose of exhausting internal means of recourse is to limit the right of the international organizations to consider denunciations and communications concerning a State, recognizing the right of the latter to settle the alleged complaint, by methods and in the ways prescribed by law.

The reason for this is obvious: to protect the sovereign rights of the Member State from unjustified attacks and to conciliate the Principles of International Jurisdiction with regard to Human Rights with the Principle of Non-Intervention in internal affairs.

The Principle of prior exhaustion of internal means of recourse stems directly from General International Law, as is shown by the fact that all International Instruments concerning Human Rights which adopt these rules require that they be applied "in conformity with the generally accepted Principles of International Law".

This Principle is naturally not absolute, and carries some very precise exceptions :

a) When no judicial procedure exists under the national law of the accused State for guaranteeing protection of the rights which are alleged to have been violated;

b) when the plaintiff is unable to avail himself of the recourses normally available;

c) When the internal bodies to whom application has been made delay their reply unduly; and

d) If it is manifest that the recourses available will prove ineffective, or if the procedure will last indefinitely.

The next step is to study how this requirement of confirming the admissibility of the communications has been complied with in regard to Chile.

It is of interest to examine the actions and omissions of the Working Group in the matter.

1.- Regarding the requirement that denunciations or communications must be in writing and may be anonymous;

As reflected in the reports submitted by the ad hoc Working Group to the Commission on Human Rights, the general rule was not only to take oral testimony without even giving the name of the witness in the report but even to accept anonymous denunciation as a general rule and to fail to communicate the information about each case to the Government of Chile and thus enable the latter to make appropriate enquiries. Thus both Principles were violated in absolute terms.

2.- Regarding the requirement that the author of the communication or denunciation must have an interest in taking action.

It is quite enough to read any of the Reports submitted so far by the ad hoc Working Group to realize that this Principle is not being respected, with the aggravating circumstance that denunciations are being accepted from Non-Governmental Organizations some of which are not even recognized by the United Nations System, which are located in various parts of the world and which would have difficulty in proving that their action is prompted by legitimate motives since the great majority of them are of manifest political colouring and have never shown any interest in Human Rights except with reference to Chile.

3.- Regarding the requirement that the denunciation or communication must come within the framework of the competence of the body to which it is presented:

In the concrete case of the procedure applied in Chile, if indeed it deserves the term, appointing a Working Group which accords itself unlimited powers is in fact the equivalent of abrogating this Principle.

4.- Regarding the requirement that the denunciation or the communication may not be offensive towards the State nor constitute an abuse of the right to denounce:

A careful examination of the successive Reports submitted by the ad hoc Working Group will confirm that this Principle has never been respected; on the contrary, the general rule has been to accept, without any objective qualification, denunciations, which are manifestly offensive towards the Government of Chile both in form and in content while, still worse, the Working Group itself gracely neglects this Principle since it frequently resorts to inappropriate language in its Reports.

5.- Regarding the requirement that the denunciation or communication must not be identical with another communication already studied or in process of being studied by another body within the United Nations System:

The absolute violation of the Principle where Chile is concerned, both by the Subcommittee and the Commission and the ad hoc Working Group, constitutes one of the most flagrant aberrations of justice under the procedure adopted.

In effect, when the ad hoc Working Group was set up and Chile, showing complete good faith, recognized its competence, it was simple justice to expect that at the same time accusations against Chile in other bodies of the United Nations System would cease.

But the reverse was the case. All the organizations within the United Nations System, UNESCO, ILO, including those which had no specific competence in the field of Human Rights, like the International Conference of Women, went on taking cognisance of denunciations against the Government of Chile.

6.- Regarding the requirement that the communication or denunciation must be handed in within a reasonable time lag:

As the Working Group does not communicate denunciations it receives to the Government of Chile, the latter has no way of confirming whether this requirement has been complied with.

7.- Regarding the requirement of prior exhaustion of internal recourses available:

With reference to this point, it may be emphatically stated that in the case of Chile none of the four exceptions mentioned are being applied at present, whereas the Principle should have been applied in toto.

Neither the Secretary General nor the Subcommittee nor the Commission on Human Rights has ever bothered to find out whether or not internal judicial recourses exist in Chile or whether these have been exhausted. As to the ad hoc Working Group, it simply disqualifies without further study all legal and administrative norms available, such as the organs of jurisdiction of the Chilean State and their proceedings, thus violating the Principle to which we refer.

Regarding the requirement referring to admissibility of communications, Resolution 1503 has been infringed in absolute terms.

D) The confidentiality to which Resolution 1503 refers has never been observed in studying the case of Chile; on the contrary, opinions have been publicly made known prior to any enquiry, and the Reports have been publicly circulated before receiving the Comments of Chile, thereby presenting a distorted picture of the Chilean reality.

E) We continue to quote Document 102 EX/19:
"Finally, the Commission on Human Rights is requested to determine whether a situation reported to it calls for a thorough study in depth and drafting a report with appropriate recommendations for the Economic and Social Council, or even setting up a Special Committee charged with enquiring into the subject, which will only be done if the State concerned gives its express agreement and if it is carried out in constant cooperation of said State and under conditions established by mutual agreement with that State".

COMMENTS :

Here again the violations of the procedure laid down in Resolution 1503 are manifest :

10.-The ad hoc Working Group has never paid any attention to the constant cooperation which the Government of Chile has always extended, and has systematically deviated from the attitude of cooperation required by the Charter of the United Nations with regard to respect and promotion of Human Rights (Article 2 item c) and Articles 55 et seq.. On the contrary, it has always acted under unilateral criteria and accorded itself sovereign independence in the question.

20.-But, much more serious, it has invariably declined to establish the conditions under which its activities were to be conducted in mutual agreement with the Government of Chile. To the Government of Chile's continuous demands on the subject the reply was that the Group is "sovereign" in determining its procedure; the Group thus made gross confusion between its own by-laws regarding which it is indeed sovereign, and the procedure for its enquiries, which in any case requires the agreement of the State concerned.

We now come to further violations of the procedure laid down in Resolution 1503.

F) Document 102 EX/19 of the UNESCO Division of Human Rights further says : "The Committee shall seek to reach amicable solutions before, during and even after the enquiry. The Committee shall formulate in a report to the Commission such comments and suggestions as it deems relevant. Until such time as the Commission decides to submit recommendations to the Economic and Social Council all measures envisaged by the Commission and the Subcommission in compliance with Resolution 1503 shall remain of confidential nature".

COMMENTS :

10.- The ad hoc Working Group has at no time attempted to find amicable solutions; quite to the contrary, it has invariably given a quality of sanction to its Reports, even disregarding its mandate since it never confined itself to studying the present situation of Human Rights in Chile, ever quoting itself and referring to its earlier Reports and giving them a convincing appearance;

20.- The violation of the requirement of privacy for the activities of the Subcommission is once again manifest, with the agreements of the Commission on Human Rights, in the sense that the discussions about the case of Chile are of public nature.

G) The By-Laws of the ad hoc Working Group (Document E/CN.4/AC.29/R.6 of 26 May 1975) constitute another obvious demonstration of infringement of the procedure laid down in Resolution 1503.

1.- Said By-Laws contain no reference to the norms of procedure which must govern the enquiry as such which, by the imperative terms of Resolution 1503, must be established by mutual agreement with the State concerned (Article Nº 6 item b) of Resolution 1503).

2.- On the other hand it is noticeable that the ad hoc Working Group confers upon itself absolute discretion with regard to subjects which pertain by their very nature to the procedure which must be established by mutual agreement, such as oral and written testimony, which means testimonial proof and documentary proof (Section VIII Articles 15 and 16 of the By-Laws).

It is obvious that, if in matters of fundamental importance to the inquisitorial procedure, like testimonial proofs and documentary proofs, the State concerned has no opportunity to intervene because it has been established by mutual agreement, then the immediate result is that former becomes indefensible in probatory questions, which is sufficient to disqualify activities carried out in such highly irregular manner.

And this did happen in practice. The Government of Chile does not know under what circumstances it can study the cases, and as a general rule does not have access to the documents presented to the ad hoc Group.

The infringements of Resolution 1503 by those By-Laws are thus evident.

H) The Subcommittee for the Prevention of Discrimination and the Protection of Minorities has continued its activities connected with the question of the situation of Human Rights in Chile, despite the fact that at the present stage with the constitution of the ad hoc Working Group its participation is no longer called for. Thus it has sought to interfere, we do not know by what right, in affairs which are private to the sovereignty of Member State, such as the Nation's financial and budgetary policy which has little or nothing to do with Human Rights. Thus the finance institutions of the Republic have received communications from the Director of the Division of Human Rights at the behest of said Subcommittee, saying literally: "In the name and at the request of señor Antonio Cassesse, Rapporteur of the Subcommittee for the Prevention of Discrimination and the Protection of Minorities, I take the liberty of bringing to your attention Resolution II (XXX) entitled 'Study of certain questions connected with the situation of Human Rights in Chile', adopted by said Subcommittee on 31 August 1977.

"In particular the Rapporteur requests precise information regarding the national budget in recent years and Chile's foreign debt, public and private (amount, sources and purpose) and regarding foreign investments in Chile in recent years".

That action by the Subcommittee, apart from constituting inadmissible interference in the internal affairs of a Member State and disregarding the Fundamental Principles of the Charter of the United Nations, constitutes in addition a new violation of the procedure laid down in Resolution 1503.

I) Conclusions concerning the way in which due procedure laid down in Resolution 1503 has been complied with in regard to Chile.

- 1.- It has been irrefutably demonstrated that the procedure which should have been applied to handling the case of alleged violations of Human Rights in Chile, which furthermore is the only one in force within the framework of the Commission on Human Rights and the Subcommittee for the Prevention of Discrimination and the Protection of Minorities as laid down in the oft-mentioned ECOSOC Resolution 1503, has been violated throughout both by the Commission and the Subcommittee as well as by the ad hoc Working Group.
- 2.- The consequence of not applying said procedure has been that not only is the Working Group ad hoc but so is likewise the procedure applied.
- 3.- It follows from the foregoing that due process has not been followed in Chile and that therefore its treatment does not correspond to pre-existing norms which are universally valid.
- 4.- Due process means the participation of a jurisdictional body of management and action independent from political influence and enjoying universally applicable powers; it also means a pre-established procedure assuring the impartiality of international inquisitorial action, the authenticity of proof and the genuine possibility of defense for the State concerned which is the subject of the enquiry.
- 5.- And undoubtedly the most serious point is that due process as laid down in the United Nations covering such matters has not been applied to Chile, as has already been demonstrated.

IV.- Principal Effects of lack of due process.

Failure to apply due process, even at minimum reasonable levels, has the following results among others:

a) Virtual defencelessness of the State which is the subject of the enquiry without regulations;

b) Consequent certainty of injustice being committed towards that State;

c) Such injustice can result in irreparable damage to fundamental interests of a national community such as affecting its honour and dignity, its security, its integrity and other, with consequent damage to its political, economic and social relations, both bilateral and multilateral;

d) Evident risk, especially considering that normally such enquiries have their origins in politico-ideological situations where opponents of the Government under enquiry are favoured by the investigating body, profiting precisely from the imperfections or normative gaps in its composition and operation;

e) Violation and disregard of the fundamental International Principles on which peaceful relations between countries are based, such as self-determination, sovereign equality of States, sovereignty and non-intervention;

f) Violation of or failure to apply procedural norms in force within the framework of the United Nations, as happened precisely in the case of Chile;

g) Difficulty or impossibility of exercising the jurisdiction of Organizations of the International Community (in this precise case the Commission on Human Rights) for safeguarding the rights of the individual due to the reluctance justifiably displayed by Member States to submitting to inadequately regulated investigatory action;

h) Obvious detriment to the very cause which it is sought to promote.

Reverting in that connection to the specific case of Chile, it is easy to prove (for that one need merely read any of the Reports of the ad hoc Working Group) that the enquiry which has been carried out with reference to alleged violations of Human Rights in Chile has in practice lacked objective and pre-established norms of justice on the subject, due to failure to apply due procedure as laid down in Resolution 1503.

The above situation signifies that the veritable prosecution which the United Nations has been conducting against Chile has not been in accordance with the fundamental principles which call for due process (as contained in part in Resolution 1503) and that therefore that national community, Chile, has been unprotected against international political might by the basic requirements which make it possible to safeguard its fundamental attributes, which includes its right to its honour and dignity, to its freedom and sovereignty and its own security.

More important, this whole process where such essential values are at stake has been carried out with provisions adopted ad casum, mainly by the investigating body itself without any participation of the State concerned.

This patent irregularity lies at the root of all the defects examined above.

For the sake of general consideration, is it in accordance with due process as a Sovereign State deserves, that a mere working body should allow itself, without the authority of any definite and adequate legal status and even in disregard of the status which by law should regulate its actions, to adopt criteria and proclaim tacit or implicit opinions casting doubt on the honour and veracity of a Government; that it should set itself up as a critical judge of the exercise and content of the Constituent, Legislative, Judicial and Executive Power and suggest, directly or between the lines, norms of conduct or the adoption of criteria for political, social, economic and other procedures, all of which should be regarded as attributes of said Sovereign State?

It is enough to look at the indexes of any of the Reports put out by the Group to see the countless times it has exceeded its terms of reference.

Anyone reading those Reports objectively will be able to appreciate that both their context and their text reveal a manifest and preconceived idea about the facts they are judging, confining themselves exclusively to pointing up information supporting that idea.

With that in mind the Group only highlights and studies the negative side, or what it describes itself as such, paying very little attention to the defences of the Government of Chile which it forthwith neutralizes with a series of arguments and data contradicting them. By so doing it injures a universal principle of justice which should guide any investigator, namely to devote as much zeal to the search for truth whether in favour of the person or body accused or against them.

What in practice occurs is that the ad hoc Working Group, more than a body charged with finding out facts, has taken on the role of judge, if not pronouncing sentence. It has thus come to the point where it proposes concrete sanctions against the State supposedly "under investigation", pronouncing judgements and opinions of facts.

V.- Submissions by the Government of Chile to the Commission on Human Rights.

With its status as a Member State of the United Nations Organization, and invoking the principles of sovereign equality of its members, universality, sovereignty, self-determination and non-intervention in its internal affairs as laid down in Article 2 Nº 1 and 7 of the Charter of the United Nations, the State of Chile submits the following concrete demands to the Commission on Human Rights of the Economic and Social Council of the United Nations Organization:

1.- Termination of all discriminatory action singled out against the State of Chile as being contrary to the principles of sovereign equality of states and universality of treatment to which they are entitled.

2.- Full enforcement and application of the procedure laid down in ECOSOC Resolution 1503 for activities carried out within the scope of the competence of the Subcommission for the Prevention of Discrimination and the Protection of Minorities and of the Commission on Human Rights referring to questions concerning the promotion and defence of Human Rights.

3.- An express proclamation, in accordance with the provisions of Article 6 item b) of Resolution 1503, of the inalienable right of the State concerned to assent to the determination of the conditions under which an enquiry is conducted which may lead to consequences and obligations for said State.

4.- Respect for the articles of the Charter of the United Nations and the principles of International Law which are generally applied, specifically for the Universality, the juridical equality of States and non-interference in their internal affairs.